S. HRG. 101-321

AUTHORIZE THE STATE OF OKLAHOMA AND THE KIOWA, COMANCHE, AND APACHE TRIBES TO ENTER INTO AN AGREEMENT REGARDING LEASE OF THE FORT SILL INDIAN SCHOOL PROPERTY; AND S. 1096 AND S. 1336, DISTRIBUTION OF FUNDS AWARDED TO SEMINOLE INDIANS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 1526

TO AUTHORIZE THE STATE OF OKLAHOMA AND THE KIOWA, COMANCHE, AND APACHE TRIBES TO ENTER INTO AN AGREEMENT REGARDING THE EXERCISE OF STATE JURISDICTION OVER A PORTION OF INDIAN COUNTRY LOCATED IN COMANCHE COUNTY, OKLAHOMA

AND

S. 1096, S. 1336

TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED THE SEMINOLE INDIANS IN DOCKETS 73, 151, AND 73-A OF THE INDIAN CLAIMS COMMISSION

SEPTEMBER 15, 1989
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

23-349 ⇆ WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S411-2.

23-349 0 - 89 - 1

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AUTHORIZE THE STATE OF OKLAHOMA AND THE KIOWA, COMANCHE, AND APACHE TRIBES TO ENTER INTO AN AGREEMENT REGARDING LEASE OF THE FORT SILL INDIAN SCHOOL PROPERTY; AND S. 1096 AND S. 1336, DISTRIBUTION OF FUNDS AWARDED TO SEMINOLE INDIANS

FRIDAY, SEPTEMBER 15, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:10 p.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senator Inouye.

Staff present: Patricia Zell, Peter Taylor, Eric Eberhard, Roy Atwood, Craig Obey, Virginia Boylan, Yvette Joseph, and Dan Christl.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Our hearing this afternoon is on three bills, the first of which, S. 1526, authorizes the State of Oklahoma and the Kiowa, Comanche, and Apache Tribes to enter into a lease involving the Fort Sill Indian School Property. The State of Oklahoma contemplates establishment of a minimum detention facility on this property and this bill will authorize the State and the tribes to provide for State, civil, and criminal jurisdiction over the property for the duration of the lease. While minor amendments may be required, it appears that the parties are in general agreement on this bill.

The committee will also receive testimony on two bills, S. 1096 and S. 1336, to provide for the use and distribution of certain judgment funds awarded the Seminole Indians of Florida and Oklahoma by the Indian Claims Commission in 1976. The judgment in question was originally in the amount of $16 million and with accumulated earnings and interest has now grown to over $47 million. The judgment was awarded as compensation for the cession or taking of lands in Florida under the Treaty of 1823, and the Treaty of 1832 relating to the removal of the Seminole Indians to Creek Lands in what is now Oklahoma.

The legislation before us is the result of a dispute between the Seminole Nation of Oklahoma and the Seminole Tribe of Florida on how the judgment funds should be divided. The Seminole Nation of Oklahoma urges a division based on a census or population count based on the period from 1906 to 1914. The Seminole Tribe of Florida contends that such a division is unfair because it does not take into account certain payments or benefits that accrued to the Oklahoma Seminoles after their removal to Oklahoma. The bills before us reflect these different views. The Traditional Seminoles of Florida are concerned about the effect of payment of these funds and oppose both bills.

I would just note that there are many tragic tales in our history of Indian affairs, but the treatment of the Seminoles, both those who were removed to the West and those who remained in Florida, is among the worst. It is my belief that the award of a judgment will never adequately compensate the tribes for these injuries.

[The text of S. 1526, S. 1096, and S. 1336 follow:]

II

101ST CONGRESS
1ST SESSION

S. 1526

To authorize the State of Oklahoma and the Kiowa, Comanche, and Apache Tribes to enter into an agreement regarding the exercise of State jurisdiction over a portion of Indian country located in Comanche County, Oklahoma.

IN THE SENATE OF THE UNITED STATES

AUGUST 3 (legislative day, JANUARY 3), 1989

Mr. BOREN (for himself and Mr. NICKLES) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To authorize the State of Oklahoma and the Kiowa, Comanche, and Apache Tribes to enter into an agreement regarding the exercise of State jurisdiction over a portion of Indian country located in Comanche County, Oklahoma.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXERCISE OF JURISDICTION BY STATE OF OKLAHOMA.

(a) IN GENERAL.—The State of Oklahoma shall be permitted to exercise civil and criminal jurisdiction over the Fort Sill Indian School as authorized by this Act.

(b) LEASE.—Subsection (a) shall take effect upon the effective date of a lease between the State of Oklahoma and the Kiowa, Comanche and Apache Intertribal Land Use Committee under which the Fort Sill Indian School is leased by the State for the purpose of operating a minimum security correctional facility for the duration of the lease and any renewal or extension of such lease.

SEC. 2. TERMINATION OF JURISDICTION UPON TERMINATION OF LEASE.

Upon the expiration or cancellation of the lease referred to in section 1(b), the exercise of civil and criminal jurisdiction by the State of Oklahoma under this Act shall terminate and civil and criminal jurisdiction over the Fort Sill Indian School shall revert to the United States and the Kiowa, Comanche, and Apache Indian tribes.

SEC. 3. RULE OF CONSTRUCTION.

Except as provided in section 1, nothing in this Act shall be construed to grant the State of Oklahoma any civil or criminal jurisdiction over any Indian Country within the State.

SEC. 4. FORT SILL INDIAN SCHOOL.

For the purposes of this Act, the term "Fort Sill Indian School" means that parcel of land located in Comanche County, Oklahoma, together with all improvements thereon, comprised of approximately 115.41 acres that is described in

the lease referred to in section 1(b). The Secretary of the Interior shall publish in the Federal Register a legal description of such land by no later than the date that is 60 days after the date of enactment of this Act.

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II

101ST CONGRESS
1ST SESSION

S. 1096

To provide for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73–A of the Indian Claims Commission.

IN THE SENATE OF THE UNITED STATES

JUNE 1 (legislative day, JANUARY 3), 1989

Mr. NICKLES, (for himself and Mr. BOREN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the use and distribution of funds awarded the Seminole Indian in dockets 73, 151, and 73–A of the Indian Claims Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, not withstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated in satisfaction of judgments awarded to the Seminole Indians in dockets 73, 151, and 73–A of the Indian Claims Commission shall be used and distributed as provided in this Act.

SEC. 2. (a) The funds appropriated with respect to the judgments awarded to the Seminole Indians in dockets 73 and 151 of the Indian Claims Commission (less attorney fees and litigation expenses), including all interest and investment income accrued thereon, are allocated hereby as follows—

(1) 75.404 per centum of such funds are allocated to the Seminole Nation of Oklahoma; and

(2) 24.596 per centum of such funds shall be allocated between the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida and the unaffiliated Seminole Indians of Florida.

(b) The funds that are required under subsection (a) of this section to be allocated among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the unaffiliated Seminole Indians of Florida, and all of the funds appropriated with respect to the judgment awarded to the Seminole Indians in docket 73–A (less attorney fees and litigation expenses), including all interest and investment income accrued thereon, shall be allocated by the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the unaffiliated Seminole Indians of Florida.

SEC. 3. (a) A proposed plan for the use and distribution of the funds allocated to the Seminole Nation of Oklahoma

under section 2 of this Act may be prepared by the governing body of the Seminole Nation of Oklahoma in consultation with the Secretary of the Interior within one hundred and eighty days of the enactment of this Act. Upon completion of such a plan, the Secretary shall submit it to the Congress without delay, together with recommendations for its approval and the reasons therefor.

(b) If a plan has not been prepared by the Seminole Nation as provided in subsection (a) of this section, the Secretary, in consultation with the Seminole Nation, shall prepare and submit a plan to the Congress for approval within one hundred and eighty days of the expiration of the period referred to in subsection (a) of this section. A copy of the plan prepared by the Secretary shall be furnished to the Seminole Nation simultaneously with its submission to the Congress.

(c) None of the funds referred to and allocated in section 2(a)(1) may be used or distributed until a roll of members of the Seminole Nation of Oklahoma born on or before and living on the date of enactment of this Act has been certified by the Secretary.

SEC. 4. (a) The funds allocated under section 2 of this Act to the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the unaffiliated Seminole Indians of Florida shall be divided among those entities on the basis of the respective number of members in each entity who are

living on the date of the enactment of this Act, unless some other basis is agreed upon by those entities in consultation with the Secretary within one hundred and eighty days of the enactment of this Act.

(b) The Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida each may prepare a proposed plan in consultation with the Secretary of the Interior for the use and distribution of their respective shares of the funds allocated to them.

(c) The Secretary, in consultation with the unaffiliated Seminole Indians of Florida, shall prepare a proposed plan for the use and distribution of the share of the funds allocated to them within one hundred and eighty days of the date of the allocation of the funds among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the unaffiliated Seminole Indians of Florida.

(d) None of the funds referred to or allocated in section 2(a)(2) and 2(b) of this Act may be used or distributed until a roll of members of the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida and the unaffiliated Seminoles born on or before and living on the date of enactment of this Act has been certified by the Secretary.

SEC. 5. (a) In the formulation of plans, the Secretary shall encourage programming of funds for economic development purposes where appropriate. Any plan for the invest-

ment, use or distribution of the funds referred to in this Act shall account for common tribal needs, educational requirements, and other long-term economic and social interests of the affected tribe. The interests of minors and other legally incompetent persons who are entitled to receive any portion of such funds as are subsequently distributed to them are and will be protected and preserved: *Provided*, That such funds may be disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the minor or legal incompetent's health, education, welfare, or emergencies under a plan or plans approved by the Secretary and tribal governing body of the Indian tribe involved.

(b) A plan for the use and distribution of the judgment funds referred to in this Act shall be implemented by the Secretary immediately at the end of the sixty-day period (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) beginning on the day such plan is submitted to the Congress, unless during such sixty-day period a joint resolution is enacted disapproving such plan.

(c) Tribal investment decisions under a plan shall be subject to the approval of the Secretary. Appoval shall be granted within a reasonable time unless the Secretary deter-

mines, in writing, that the investment would not be reasonable or prudent or would otherwise not be in accord with the provisions of this section.

(d) Neither the United States nor the Secretary shall be liable, because of the Secretary's approval of an investment decision under this section, for any losses in connection with such investment decision.

SEC. 6. (a) The funds allocated pursuant to this Act are hereby declared to be held in trust by the United States for benefit of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the unaffiliated Seminole Indians of Florida respectively.

(b) None of the funds held in trust by the United States under this Act (including interest and investment income accrued on such funds while such funds are held in trust by the United States), and none of the funds distributed per capita or made available under this Act for programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of $2,000, any other Federal or federally assisted program.

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II

101ST CONGRESS
1ST SESSION

S. 1336

To provide for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73–A of the Indian Claims Commission.

IN THE SENATE OF THE UNITED STATES

JULY 17 (legislative day, JANUARY 3), 1989

Mr. GRAHAM (for himself and Mr. MACK) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73–A of the Indian Claims Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Florida Seminole Indian Act of 1989".

SEC. 2. Notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated in satisfaction of judgments awarded to the Seminole Indians in dockets 73, 151, and 73–

A of the Indian Claims Commission shall be used and distributed as provided in this Act.

SEC. 3. (a) The funds appropriated with respect to the judgments awarded the Seminole Indians in Dockets 73 and 151 of the Indian Claims Commission (less attorney fees and litigation expenses previously paid), including all interest and investment income accrued thereon, are allocated as follows:

(1) 50 percent of such funds shall be allocated among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida in accordance with subsection (b), and

(2) 50 percent of such funds are allocated to the Seminole Nation of Oklahoma.

(b)(1) The funds that are required under subsection (a)(1) to be allocated among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida and all of the funds appropriated with respect to the judgment awarded the Seminole Indians in Docket 73–A (less attorney fees and litigation expenses previously paid), including all interest and investment income accrued thereon, are allocated as follows:

(A) the Seminole Tribe of Florida, 77.20 percent;

(B) the Miccosukee Tribe of Indians of Florida, 18.16 percent; and

(C) the independent Seminole Indians of Florida (as a group), 4.64 percent.

SEC. 4. The funds allocated to each Indian tribe or group under section 3 are hereby declared to be held in trust by the United States for the benefit of such Indian tribe or group.

SEC. 5. (a) A plan for the use and distribution of the funds allocated to the Seminole Nation of Oklahoma under section 3(a) of this Act may be prepared by the governing body of the Seminole Nation of Oklahoma in consultation with the Secretary of the Interior within the 180-day period beginning on the date of enactment of this Act. The Secretary shall, upon completion of such a plan, submit the plan to the Congress, together with recommendations regarding approval of the plan and the reasons for such recommendations.

(b) If, by the close of the 180-day period described in paragraph (1), a plan has not been prepared by the Seminole Nation of Oklahoma as provided in paragraph (1), the Secretary, in consultation with the Seminole Nation of Oklahoma, shall prepare and submit a plan for the use and distribution of the funds allocated to the Seminole Nation of Oklahoma under section 3(a) to the Congress for approval by no later than the date that is 180 days after the close of the 180-day period described in paragraph (1). A copy of the plan prepared by the Secretary under this paragraph shall be fur-

nished to the Seminole Nation of Oklahoma at the time the plan is submitted to the Congress.

(c) Any plan for the investment, use, or distribution of any funds allocated that is prepared under this section shall account for common needs, educational requirements, and other long-term economic and social interests of the tribe. In consultations undertaken in the formulation of plans under this section, the Secretary shall encourage use of funds for economic development purposes, when appropriate.

SEC. 6. (a) Investment decisions made by the Seminole Nation under a plan established under section 5 shall be subject to the approval of the Secretary. Such approval shall be granted unless the Secretary determines, and notifies the Seminole Nation in writing, that the investment would not be reasonable or prudent or would otherwise not be in accord with the provisions of this Act.

(b) Neither the United States nor the Secretary shall be liable for any losses in connection with any investment decision that is approved by the Secretary under subsection (a).

SEC. 7. The Secretary shall pay the governing body of the Seminole Tribe of Florida such portion of the amount held in trust for that tribe under section 3 of this Act to be allocated or invested as the tribal governing body determines to be in the economic or social interest of the tribe within 60

days after submission of an appropriate resolution by the tribal governing body.

SEC. 8. Notwithstanding any other provisions of this Act, no plan for the use and distribution of the share of the funds allocated to the Miccosukee Tribe of Indians of Florida shall be prepared or implemented and no funds allocated to the Miccosukee Tribe of Indians of Florida shall be distributed to the tribe, its members, or any other person unless such plan or distribution is duly authorized by the General Council of the Miccosukee Tribe or by a referendum vote of the members of the tribe duly called by the General Council of the tribe at which a negative vote is permitted. Such funds (and the interest therefrom) shall be held in trust by the United States and invested as provided in the Act of June 24, 1938 (52 Stat. 1037) as amended (25 U.S.C. 162a), except that part of all of the amount may from time to time be paid to the governing body of the Miccosukee Tribe of Indians of Florida as may be authorized under this section.

SEC. 9. (a) The Secretary shall invest the funds allocated to the independent Seminole Indians of Florida (as a group) under section 3 in accordance with subsection (a) of the first section of the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a) until the date on which the funds are distributed under subsection (c) or as may be otherwise provided for under subsection (d).

(b)(1) Under regulations prescribed by the Secretary, the Secretary shall compile a roll of those independent individuals of Seminole Indian lineal descent who—

(A) were born on or before, and are living on, the date of enactment of this Act,

(B) are listed on or are lineal descendants of persons listed on the annotated Seminole Agency Census of 1957 as independent Seminoles

(C) are not members of an Indain tribe recognized by the Secretary on the most recent list of such Indian tribes published in the Federal Register.

(2) All determinations in the preparation of the roll under paragraph (1) of this subsection shall be based on timely applications for inclusions on the roll supported by evidence satisfactory to the Secretary.

(c) As soon as practicable after the roll required under subsection (b) has been compiled, the funds allocated to the independent Seminole Indians of Florida (as a group) under section 3, including all interest and investment income accrued thereon to the date of payment, except as provided for in subsection (d), shall be distributed on a per capita basis, in payments as equal as possible, to all independent Seminole Indians of Florida enrolled under subsection (b) who make timely application to the Secretary.

(d) In the event of Federal recognition of the independent Seminole Indians of Florida as a Tribe, band, or organizations prior to the per capita distribution required by subsection (c), the governing body may request that their funds be retained or disbursed in a similar manner as the Miccosukee Tribe of Indans of Florida for use in supporting tribal governmental programs.

(e) Any person otherwise eligible for a per capita payment except for membership in the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida subsequent to the Seminole Agency Census of 1957 shall have the option to relinquish their membership in favor of the per capita payment or subject to the approval of the tribe, retain their membership by authorizing their per capita share to be paid to the account of the respective tribe.

(f) Acceptance of a per capita share shall not be construed as extinguishing any individual right, title, interest, or claim to lands or natural resources in the State based on use or occupancy or acquired under Federal or State law by any individual Indian who is not derived from or through the tribes, their predecessors, or some other American Indian tribe.

SEC. 10. None of the funds held in trust by the United States under this Act (including interest and investment income accrued on such funds while such funds are held in

trust by the United States), and none of the funds made available under this Act for programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or except for per capita payments in excess of $2,000, any other Federal program or Federally assisted program.

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●S 1336 IS

The CHAIRMAN. The hearing record on S. 1096 and S. 1336 will remain open for 30 days. I am directing this unusually lengthy time in the hope that the tribes will get together during this period to resolve this matter among themselves so that Congress will not have to impose a solution on them.

We would like to open this afternoon's hearing with testimony from two very distinguished members of the U.S. Senate, Senator Boren and Senator Nickles on S. 1526.

Senator Boren.

STATEMENT OF HON. DAVID L. BOREN, U.S. SENATOR FROM OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman. Again, Senator Nickles and I appreciate the opportunity to be with you, and I appreciate the comment that you have just made in regard to the historic treatment of the Seminoles, or more accurately the historic mistreatment. You have stated it with accuracy and with sensitivity. And let me also say, as those from Oklahoma who are here in the hearing room today well know, you have taken an unusually high level of interest in the problems and the opportunities that our Indian citizens have in the State of Oklahoma. Your visit to our State, the amount of time and effort and personal study that you have put in to understanding our problems, is something that is an inspiration to all of us. I do not think there is ever been a Member of the Congress from a State outside the State of Oklahoma that has come and done as much homework and has spent as much time and shown the interest that you have. And we appreciate it deeply. We appreciate the leadership that you are giving to this committee.

I am the principal author of S. 1526. Senator Nickles is my principal co-sponsor. He's the principal author of S. 1096, and I am his principal co-sponsor on that legislation. So I will lead off with comments about S. 1526, and conclude by adding some words on S. 1096, and then my friend and colleague will add his comments with the main emphasis on S. 1096.

I am very pleased to testify on behalf of S. 1526, a bill that will enable three tribes in Oklahoma to enter into a unique contract with the State that will address the issue of where to house the State's growing prison population as well as providing a much needed opportunity for economic development for these tribes.

This bill, in effect, serves two purposes. First, it is of great economic opportunity for the Kiowa, Comanche, and Apache Tribes to utilize the buildings and facilities of the old Fort Sill Indian School. The economic pressures facing the Southwestern part of our State are staggering, and these tribes have been working diligently to find a workable opportunity to use and develop this joint resource.

The Fort Sill Indian School, located near Lawton, OK, is comprised of more than 115 acres of tribal land and a number of large and small buildings on the premises. The school, formerly operated by the Bureau of Indian Affairs [BIA], was closed and conveyed by the United States to the ownership of the Kiowa, Comanche, and Apache Tribes in May 1981. Since then, they have established the Kiowa-Comanche-Apache Land Use Committee and have been

working toward economic self-sufficiency so that they can provide necessary programs and services for their members.

The second purpose this legislation serves is to enable the State of Oklahoma and the Oklahoma Department of Corrections to provide a partial solution to the problem of the State's growing prison population. By utilizing the Fort Sill facilities for a minimum security prison which would house about 100 inmates initially, the State can provide a much needed facility to house work crews in the Lawton/Duncan area that the Department of Transportation could and would utilize for work in that area. The prison could eventually house up to 400 persons.

I am pleased to be able to offer this legislation along with my colleague, Senator Nickles, on behalf of the Kiowa-Comanche-Apache Land Use Committee with support from the State Department of Corrections, from the Governor of the State, Governor Henry Bellmon, the Lawton Department of Commerce, the City Council and many others. I know that there are many divisive issues faced by this committee, and I am happy to report this is one piece of legislation that as far as I know has the unanimous and uniform support of all groups that are involved. And we hope that will enable the committee, since it has this kind of unanimity of support, to move forward immediately to pass out this legislation.

The funding for renovation of the school for the work station has already been obtained by the Oklahoma legislature but is dependent on this legislation, which would enable the contract to be executed.

Mr. Chairman, a unique feature of our policies for Native American lands is that the individual tribes hold civil and criminal jurisdiction over these lands, as you know. Obviously, the State, in a State prison facility, would need to hold jurisdiction in this situation to successfully administer the operations of a prison facility which would include both Indian and non-Indian prisoners, and Indian and non-Indian employees. In this case the tribes want to waive their jurisdiction solely for the length of the contract. We are not asking that they waive their jurisdiction in general, but soley for the purposes of allowing this contract to be executed during it is term. It is in no way intended to do more or to set any kinds of precedents for other situations that are not the same as this. And at the expiration of the contract, if it is not mutually renewed, such jurisdiction, of course, would return to the United States, as opposed to the State of Oklahoma, and to the Kiowa, Comanche, and Apache Tribes.

This is not the only situation where tribes are using creative ideas to enhance economic development ventures. But this contract is very close to being able now to be executed. The funding is available, all groups are for it, and all that stands in the way of this being done is this technicality which would be corrected by this legislation. Congressman McCurdy has introduced almost the identical language in the House of Representatives, and it is my understanding the House has now moved positively on this legislation to put it on the calendar. Senator Nickles and I are pleased to be working together toward this goal in the Senate. I hope that this committee will be able to move forward on this legislation which will be a

benefit to everyone involved, the State, the three tribes involved, and the area of the State of Oklahoma that is involved.

If I might, let me just turn briefly to S. 1096. Again, I appreciate your including this very important issue in these hearings, and your attempt to bring the tribes, both in Florida and Oklahoma, together on a solution. And it is very important that we move ahead.

This has been delayed for a long period of time. it is of extreme importance to the Seminole Nation of Oklahoma. And on June 1, I was very pleased to join with Senator Nickles in introducing legislation to help bring about this settlement and timely distribution of the funds that are so badly needed in Oklahoma. These funds were awarded as a result of a 1976 decision. It was $16 million at that time, placed into separate accounts with accrued interest in excess of more than $40 million.

Since 1976 the Oklahoma and Florida Seminole tribal leaders have tried in good faith to reach an agreement, but they have just not been able to do so. Tentative agreements have been reached and then dissolved. When the funds are distributed, the tribes would submit to and receive approval from the BIA on their plans for the use of such funds. I would say that the Seminole Nation in Oklahoma has done a lot of planning in this regard to working for programs that would bring about economic self-sufficiency, and less dependence on Federal subsidies. Some ideas being discussed are a farming cooperation project, beef raising enterprises, and tourism. Also, projects to deal with some very important underlying social problems such as alcoholism, child care and drug abuse would be funded.

The Seminoles in Oklahoma are facing a terrible economic situation. Mr. Chairman, I looked at the figures recently, and I know this first hand. I live in Seminole County. I live in what was the Seminole Nation, the exact boundaries of my home county are the boundaries of the Seminole Nation which was established after the forced removal. And the unemployment rate in our county is approximately 15 percent. The unemployment rate, however, among active members of the Seminole Tribe in Oklahoma at this time is in excess of 60, six zero, percent. The unemployment rate is terribly high. And there is a great economic need. And therefore it is frustrating, indeed, that with these pressing economic needs, the need for economic opportunity, and the need to address some of these underlying problems, that there is $40 million now sitting in a fund that could do so much good at this critical time for the Seminoles of Oklahoma, that we are not able to put it to use and to end the distressing economic conditions in which many people are living. We have been looking at this situation now for 13 years.

So I think that it is encouraging that you would hold this hearing. Congress must accept the responsibility for carrying out the intentions of our Government. Legislative intervention is not always appropriate, and you have shown your sensitivity to wanting to give the elements of the tribes one more chance to work out a solution. But if that does not happen, I think it will be necessary to bring this matter to an acceptable conclusion so that these funds can be beneficially put to use for the people that need them so badly. And I believe with the support of the committee and the BIA, the settling of this award division would be an important step

in improving the economic condition of the Seminole Nation, as well as those in that area of the State of Oklahoma. So I appreciate very much your interest in this and your calling of these hearings. It is extremely important that we move ahead to resolve this issue.

Naturally we feel that our proposal is the fair study, going back based upon the 1823 year of the taking, and the BIA studies showing that at that time the population was roughly at a 3 to 1 ratio, 2,146 in Oklahoma versus 700 in Florida, and that is the reason we feel that this is a fair approximation of the way that the division should occur roughly 15 percent and 25 percent.

And I would like to yield to my colleague at this point who is taken the lead in drawing up this legislation, S. 1096. it is always a privilege to work together with him. We do that as partners, and I would like to, if I could now, defer to Senator Nickles for any comments that he might like to make.

[Prepared statement of Senator Boren appears in appendix.]

The CHAIRMAN. Senator Nickles.

STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM OKLAHOMA

Senator NICKLES. Mr. Chairman, thank you very much. I join my colleague, Senator Boren, in thanking you for taking your valuable time to hold this hearing. I am not sure if all of the people who are here today are aware of the fact that you are chairman of the Defense Appropriations Subcommittee, which has enormous responsibility, and has just concluded marking up a $3 billion appropriation bill for next year. So, I compliment you for your patience and willingness to hold this hearing. We are not talking about billions of dollars in this case, but we are talking about something that is very important to the future of four tribes in my State of Oklahoma. So I thank you, and I will be very brief with my statements.

I also want to thank you for the time you took to visit our State recently. You did visit part of Indian country, and I think that is a testament that speaks very well of you, and of this committee, and of the Senate as well. I am very appreciative of your concern and willingness to work toward the improvement of Oklahoma Indians, and all of Indian country. Your investment of several days during one of our recesses is very much appreciated by all Oklahomans.

Mr. Chairman, I am happy to co-sponsor S. 1526 with Senator Boren. He's outlined it and explained it quite well, and I can tell you it is very important for the Kiowas, the Comanches, for the Apaches, and it is important for the State of Oklahoma. It is a bill, Senator Boren mentioned, that is supported by all interested parties. There is no reason why it shouldn't receive very quick and unanimous support through both the House and the Senate.

Mr. Chairman, I am also here on behalf of a bill which I introduced and co-sponsored by Senator Boren, S. 1096, which would divide the Seminole Judgment Fund. And it is been explained both by yourself and Senator Boren, so I will not go into too many of the details, but maybe reiterate. But it is very important that the division take place. This original award was actually made in 1976. We are talking about $16 million which is now accrued to $47 million, estimated to be $50 million by the end of the year.

Why is it important for this disbursement to take place now? It is because we have the Seminoles in Oklahoma who financially need the money. The Government has already agreed, the courts have agreed that the money is to be divided between the Seminole Nation and the Seminole Tribe, but there has been a dispute between both groups on the proper division. We have introduced legislation that it be divided on a 75/25 ratio. We happen to think that this is the fairest because that is the way the population actually breaks out. It is based on population figures determined by the Department of Interior which identified 2,146 Oklahoma Seminoles to 700 Florida Seminoles. So the Secretary of Interior proposed the 75/25 breakout in 1977, and so that is the way we've introduced it into legislation.

As I understand the Seminole Tribe of Florida disagrees and they demand a 50/50 split. To be partially offset because of land awards that were made to the Oklahoma group.

Well, Mr. Chairman, without going into a great deal of explanation, I think the 50/50 split is unacceptable. And I believe that it is unconscionable to argue that the Oklahoma group benefited by the Trail of Tears. Not only did hundreds of Seminoles die during the forced march from Florida into Indian Territory, but lands initially given to the tribe as a reservation were later taken from them as Oklahoma became a State. Today the Seminole Nation has a total of only 380 acres of tribally-owned land in the State of Oklahoma.

The division of the judgment fund at this time is necessary to help the Seminole Nation of Oklahoma out of the economic hard times which they have faced for several years. And Senator Boren explained this point. Recently their leadership has stabilized. The tribe has made great efforts to move forward in providing for their people. However, without the judgment award moneys, their efforts are severely stalled and the needs of tribal members will continue to go unmet.

In fact, the health-related problems are higher among the Oklahoma Seminoles than any of the other Five Civilized Tribes. One of the main reasons for this is because, unlike the other tribes, the Seminoles are unable to help subsidize the health care needs of their citizens.

On the other hand, the Seminole Tribe of Florida is flourishing economically with a reservation land base of approximately 80,000 acres. that is 80,000 acres that the Seminoles in Florida have, compared to 380 acres that the Seminoles have in Oklahoma. And I might repeat that for the Chairman so he would have a little bit of a better analysis between the two tribes. The Seminoles in Florida have 80,000 acres. The Seminoles in Oklahoma have 380 acres. A significant difference in economic well-being. I would point out that the economic value that is held by the Seminoles in Florida is much greater than that than the value of the land that is held in Oklahoma. Because of their economic well-being, the tribe in Florida is in a much better financial situation to hold out rather than negotiate. As Senator Boren has explained, the economic condition is such in Oklahoma that the Seminole Nation really needs disbursement of the money as rapidly as possible.

And so, Mr. Chairman, to conclude, I would state that the Seminoles are one people. They were split by a callous and a regrettable

act of the Federal Government. It is indeed sad, Mr. Chairman, that the two tribes are at odds over this issue of money. it is also unfortunate that in a recent edition of the Seminole Tribune that this matter was described as a war. I would hope that the two groups will accept a reasonable split, and will work together in the future to develop a friendlier relationship and explore their culture and history together.

Mr. Chairman, we have with us today the Chief of the Seminole Nation of Oklahoma, Chief Jerry Haney. And I also want to compliment the former chief, Ed Tanyan, who we've worked very well with for several years. And also Attorney Paul Niebell, who is been working on this issue, believe it or not, Mr. Chairman, since 1930. So this is an old issue. It is an important issue. It is an issue that needs to be resolved. Certainly it would be my preference if the two tribes could work it out amongst themselves, and come up to a reasonable and agreeable split. I still happen to believe very strongly that the split should be 75/25. If not, I hope the Congress will act and act promptly to enact this legislation and make the disbursement of funds, which are rightly owned by the Seminoles, to happen this year, this year in this Congress.

Mr. Chairman, thank you very much.

[Prepared statement of Senator Nickles appears in appendix.]

The CHAIRMAN. I thank you very much.

Before I proceed with a few questions, I would like to advise my friend, Senator Boren, that the concerns you shared with me in regard to the Osage Tribe have been appropriately addressed by the subcommittee this morning.

Senator BOREN. I appreciate that very much.

The CHAIRMAN. And it is all clarified.

Senator BOREN. I appreciate that. I will give that good news to them. Thank you very much.

The CHAIRMAN.Second, I should confess to you that 2 years ago when I became chairman of this committee, I knew very little about Indian country and Native Americans. I learned a few things. For example, that Oklahoma together with California is the home for at least 50 percent of all Indians residing in the Continental United States. Second, in the days of the Trail of Tears Oklahoma was, to put it very crudely, the dumping ground. That is where they gathered all of the Indians in tragic fashion. But I think the United States, the people of the United States, should be made aware of the attitudes of the people of Oklahoma today.

I would say in visiting the 50 States, the State of Oklahoma has about the most enlightened attitude toward Native American Indians. As Senator Nickles is well aware, when I was there in June of this year, your Governor, Governor Henry Bellmon, issued two proclamations. And these proclamations had a very impressive effect upon Indian country. One was Tribal Cultural Awareness Week. The other, Tribal Government Recognition Week. At a time when other States were refusing to recognize tribes, Oklahoma was setting aside weeks to commemorate this. Your State legislature also passed legislation to recognize and affirm the government-to-government relationship, sovereign relationship with the Indian Nations of Oklahoma. And your Supreme Court hosted the Annual Conference on Sovereignty. I would hope that other States will

follow the leadership of Oklahoma and carry out this sensitive relationship with members of Indian country. So, through you I would like to commend the people of Oklahoma, and the government of Oklahoma for its enlightened, sensitive attitude toward Native Americans.

Senator BOREN. Mr. Chairman, we really appreciate those comments. We do take pride in that history and that tradition in Oklahoma. Since you have been there we've also had the unveiling in the front of our State Capitol building of a great work by Alan Houser, the Apache sculptor, who is father was the translator for Geronimo. And it has now been unveiled with the title, As Long As The Waters Flow. And it is a great tribute to the contribution that the Indian citizens of Oklahoma made to the entire State. It is standing there symbolic, the overpowering presence now on the lawn of our State Capitol building. And I hope you will get to see it when next you come to visit.

The CHAIRMAN. That would be a good excuse for me to get there.

Senator BOREN. I think you have to come back to see it. But it symbolizes exactly the feeling that Oklahomans have and the pride that we all take. In fact all of us do our best to strain to find if we do not have a little share in that Indian heritage ourselves. And we are all very, very proud of any elements of Indian descent that we have in our own family tree. And many of us claim that. I am proud to claim that, and many others are too. But that is an attitude in Oklahoma of tremendous pride that we feel. And I am glad you sensed that when you were there.

The CHAIRMAN. And I was most pleased, Senator Nickles, in you joining me out there. I still wear my jacket.

Senator NICKLES. Good. I was thinking I should have worn mine for the hearing.

But we do appreciate your visit to our State, and not only your visit to the State, but Senator Boren and I are well aware of the fact of the pressing time demands, and when we visit a lot of other States many times we drop in in the afternoon and we are gone in the evening. And we are down in the State for a hearing of 3 or 4 hours, and a press conference and we are gone. You spent a few days in Oklahoma and met with several of our tribal leaders on both sides of the State. I was happy that I was able to spend a short period of time with you. But I am most appreciative that you would take that much time out of your schedule and spend it in our State to try and help our Indian tribes. I can tell from your chairmanship of this committee that you have accomplished some of those goals, and we look forward to your continued leadership in this capacity.

The CHAIRMAN. I am certain you are aware, if not I am pleased to tell you, that the administration favors S. 1526. However, they recommend a few changes. And I think that their recommendations are rather—I think they are reasonable.

First, for example, they feel that the lease should require the approval of the Kiowa, Comanche, and the Apache Indian Tribes.

Senator BOREN. Yes.

The CHAIRMAN. And that of the Secretary of Interior, or his designee. And we are now in the process, we have communicated with

these tribes in getting the approval. And I am certain you will approve that also.

Senator BOREN. Absolutely, Mr. Chairman. I think that is a very reasonable proposal. And as I say, we've been assured of the support of these tribes, but we would not want to go forward without making sure that that support was actually there. And I think a formal approval process is certainly a wise provision of the legislation.

The CHAIRMAN. The other recommendation relates to who has exclusive jurisdiction over this matter because the administration feels that the bill does not clearly specify. We would like to recommend that the bill include a provision to make this matter an item of negotiation between Indians, the State and the Federal Government. And they can decide who has exclusive, or whether there should be concurrent jurisdiction. So, we are certain we can work this out.

Senator BOREN. So, if and it is my understanding, that they have already an agreement, that during the terms of the contract, so that in other words this could be operated as a prison facility, that the State of Oklahoma, that they would agree that during the terms of the contract—it would have to, of course, be renewed periodically and reassessed periodically—that they would grant it for that purpose while making it very clear that they were making no final grant of jurisdictional control, and not any grant in perpetuity of any kind. But that would be a matter that it would be just left to the contract to decide if the two parties then agreed upon it.

The CHAIRMAN. We would like to expedite this matter for you. And as soon as we receive word from your State and from the Indian tribes, we will proceed and expedite this matter.

Senator BOREN. Thank you very much.

The CHAIRMAN. On the matter of the Seminoles, I would like to make this observation. In the 2 years I have sat here as chairman of this committee, I have noted that in most cases decisions that are made in Washington for Indian problems are the worst solutions. If at all possible, solutions should be made in Indian country by Indians. And that is why I have made an extra effort to travel to Indian country to confer with Indian leaders to tell them that that is the way it should be done. In fact, I would prefer negotiations, for example, rather than go to court. And that is the way a sovereign should conduct himself, not leave it up to a third party to decide if at all possible. So I would hope that the leaders of the Florida and the Oklahoma Seminole Tribes will be able to get together and resolve this matter.

Otherwise, as both of you have indicated we cannot wait forever. And I do not think it is fair to the Seminoles in Oklahoma, just as much as it is not fair to the Seminoles in Florida. And if we are forced to do this, I can assure my colleagues from Oklahoma that this committee will act, knowing deep within my heart that the decision we make may not be the proper one. We are not Indians. No matter how sensitive we wish we could be, we cannot be that sensitive. So, I would hope that a last effort be made to get together and see if they can resolve this.

And with that I would like to thank both of you for your participation with my assurance that every effort will be made to expedite the process you have asked for.

Senator BOREN. Thank you.

Senator NICKLES. Thank you.

The CHAIRMAN. And without objection your colleagues from Florida, who have made an attempt to come here, but they were not able to do so, they have asked that their statements be made part of the record on these measures.

[Prepared statements of Senators Graham and Mack appear in appendix.]

Senator BOREN. Thank you, Mr. Chairman.

Senator NICKLES. Thank you, Mr. Chairman.

The CHAIRMAN. Now, may I call upon the Deputy to the Assistant Secretary of Indian Affairs, Mr. Walter Mills.

Mr. Mills, did I present your case properly, sir?

Mr. MILLS. You sure did, Mr. Chairman, correctly.

STATEMENT OF WALTER MILLS, DEPUTY TO THE ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY TERRY LAMB, HISTORIAN

Mr. MILLS. We have introduced a statement for the record.

The CHAIRMAN. Both of your statements will be made part of the record, sir.

Mr. MILLS. Let me just summarize the statement on S. 1526. We are happy to be here to testify on S. 1526, a bill to authorize the exercise of State jurisdiction over a portion of Indian country located in Comanche County, OK. The administration supports S. 1526 if amended to address our concerns.

We foresee that this proposed lease arrangement would be very beneficial to the three tribes in their pursuit of economic self-sufficiency. The bill would permit the State of Oklahoma to lease the Fort Sill Indian School property and improvements for the purpose of operating a minimum security correctional facility.

Currently the representatives of the Kiowa, Comanche, and Apache Tribes on the Intertribal Land Use Committee do not possess the proper authority to commit the tribes to the exercise of State jurisdiction.

In order to allow the tribes to empower the Intertribal Land Use Committee to enter into the lease agreement, we recommend that the following sentence be added to the end of section 9(b), "Such lease shall require the approval of the Kiowa, Comanche, and Apache Indian Tribes and the Secretary of the Interior or his designee."

S. 1526 does not clearly specify whether the State jurisdiction would be exclusive or concurrent. We recommend that the bill be amended to specify that the State would have exclusive jurisdiction, both civil and criminal over the Fort Sill Indian School site that will be leased.

That concludes my statement, Mr. Chairman. I will be glad to answer any questions if you have any on that.

The CHAIRMAN. Well, we are right now in the process of getting the approval of the three tribes, and I am certain they will approve the recommended amendment.

On the second one, would it suffice if we place a provision in the bill to make this item of jurisdiction an item of discussion in the lease?

Mr. MILLS. That would be fine with us.

The CHAIRMAN. And now, shall we proceed to the Seminole bill?

Mr. MILLS. Yes.

Mr. Chairman, I would like to have Mr. Terry Lamb, the tribal government specialist and historian join me, and he may answer any questions that we may have later on.

The CHAIRMAN. That will be fine, sir.

Mr. MILLS. It is a pleasure to be here to discuss S. 1096 and S. 1336, bills which provide for the use and distribution of funds awarded the Seminole Indians of Florida and the Seminole Nation of Oklahoma.

We believe that the better solution would be for the tribes to get together to solve the division of funds among themselves. However, in the absence of that occurrence we would recommend enactment of S. 1096. We do have some concerns with portions of the bill and have suggested amendments with clarifying language as provided in our attachment.

We do not support S. 1336. We do not agree with the division of funds as presented in this bill and find relinquishment of tribal membership for a per capita payment in section 9(e) unacceptable.

The equitable solution of this judgment award has been a long standing issue between the Seminole entities of Florida and the Seminole Nation of Oklahoma. The tribal beneficiaries have not been able to come to an agreement in the division of these funds. We believe the most equitable solution is to base the distribution on the historical population count of each entity as determined by the Reconstructed Florida Seminole Census of 1914 and the Oklahoma Seminoles by blood in 1906, as corrected in 1914.

The Results of Research Report completed in 1977 determined that the count of the Seminole Indians living in Florida in 1914 was 700 and that the roll of the Oklahoma Seminoles by blood in 1906, as corrected in 1914, numbered 2,146. This makes a total of 2,846. Based on these historical population figures the Oklahoma share of the judgment funds is therefore 75.404 percent, and the Florida Seminole share is 24.596 percent. This division is provided for in S. 1096.

This concludes my summary. I would be happy to answer any questions, Mr. Chairman.

[Prepared statement of Mr. Mills appears in appendix.]

The CHAIRMAN. Yes; I do have a few questions.

There are two groups of Indians that are mentioned in your testimony, but not included in the bill before us. One is the Okliwawa Band of Seminoles in Florida. The other is the Seminole Freedmen of Oklahoma. For the record can you tell us who are the Freedmen, and their relationship with the Department of the Interior, whether they are eligible for Federal services, whether their property is held in trust, and whether you have a government-to-government relationship with the Freedmen?

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Mr. MILLS. The Freedmen in this particular legislation, Mr. Chairman, were not members of the tribe until, I believe, it was 1866, some 43 years after the dates we are using as a result of the research. So we feel we have no relation in this particular bill.

The CHAIRMAN. The Department of Interior has no formal relationship with the Freedmen?

Mr. MILLS. Not as it relates to this particular bill.

The CHAIRMAN. You have no government-to-government relationship with them?

Mr. MILLS. No.

The other, the Okliwawa Band as of this date we have no petition before us for any tribal recognition from any group from Florida like this.

The CHAIRMAN. Your recommendation would limit participation in the award to the modern day successor of tribal entities, is that not correct, successors today?

Mr. MILLS. I will have to refer that over to Mr. Terry Lamb.

The CHAIRMAN. And is it not based upon comparative population, or am I wrong?

Mr. LAMB. Well, the division of the funds, Senator, in the results of Research Report was based upon the Dawes roll which had been composed in 1906 with the Florida Seminoles. That was corrected up to 1914 in line with the use of that date when the Results of Research Report was compiled, in order to come up with a number for the Florida Seminoles based upon the records which were available at that we could go that far back in time to in order to get close to the date of taking. The division as it is laid out in the Results of Research Report indicates that there were approximately 1900 of the 2,100 Oklahoma Seminoles at that point in time that were half-bloods or greater, and that that was the basis upon which the division was made. When that was compared with the Florida Seminole Reconstructed Census for 1914, which arrived at a number of 700.

Now, the division of the funds, 75/25, is based upon the people at that point in time that were enrolled, not the present day population. The moneys would be distributed amongst the present day population were any of the successor groups to have a per capita. Then they could distribute it on a per capita basis amongst the present population. But the present population is not the basis upon which the division is made.

The CHAIRMAN. So, it is based upon the 1906-1914 Census?

Mr. LAMB. That is correct.

The CHAIRMAN. Now, does this correspond with the standard practices and procedures of your Department with regard to distribution of judgment funds?

Mr. MILLS. Yes; it does, Mr. Chairman. The population in the past has been about the only solid basis we have to distribute funds on, or to divide funds on.

The CHAIRMAN. Is this distribution policy based upon regulation or statute?

Mr. MILLS. I will have to refer that to Mr. Lamb.

Mr. LAMB. Well, under the 1973 Indian Judgment Funds Act, Senator, as you are aware, which was amended in 1983, lays out certain procedures whereby judgments which were awarded by the

Indian Claims Commission and subsequently the Court of Claims, lays out procedures whereby the judgment can be distributed. But in cases where you have multiple beneficiaries of any of these judgment awards, the BIA compiles the Results of Research Report as in the Seminole case and as in other cases to determine who might be the modern day successors, as it were, because the Court of Claims and the Indian Claims Commission in most cases they have not done that. And they issued a number of court decisions in that area.

The CHAIRMAN. So the criteria that you have used is not part of any statute?

Mr. LAMB. I am sorry?

The CHAIRMAN. The criteria used by the Department of Interior in coming to the judgment on distribution is not based upon statute, law?

Mr. LAMB. Well, the 1973 Act provides that the Results of Research Report should be completed by the Secretary. And that is laid out in 25 CFR prior to 1987. I mean there is statutory authority for the division of the funds so that the plan can be—the Secretarial Plan can be composed and sent up to the Congress for the 60 day review period. If the Congress does not pass a joint resolution of disapproval, then the plan becomes effective.

The CHAIRMAN. So it is your contention that the recommendation that you are making is appropriately based upon law, and standard practice and procedure?

Mr. LAMB. Well, that is been the standard practice and procedures through the Department for quite a number of years with a number of these judgment funds, yes, sir.

The CHAIRMAN. That is about all I have as far as questions are concerned. And once again, to reiterate, you support S. 1096?

Mr. MILLS. that is correct, Mr. Chairman.

The CHAIRMAN. Specifically, 75 Oklahoma, 25 Florida?

Mr. MILLS. that is correct.

The CHAIRMAN. I thank you very much.

Mr. MILLS. Thank you, Mr. Chairman.

The CHAIRMAN. And now may I call upon the first panel, consisting of the Honorable Jerry Haney, Principal Chief of the Seminole Nation of Oklahoma, and the Honorable Dwayne Miller, Band Chief, Seminole Nation of Oklahoma, who will be accompanied by Mr. Paul Niebell, Esquire of Washington, DC.

STATEMENT OF HON. JERRY HANEY, PRINCIPAL CHIEF, SEMINOLE NATION OF OKLAHOMA, WEWOKA, OK

Mr. HANEY. Thank you, Mr. Chairman.

It is a pleasure and a privilege for me to be here today to address the committee on behalf of the Seminole Nation on the merits of S. 1096. I also have the privilege of meeting you while you were in Oklahoma. At that time I was the Commander of the Vietnam Era of Veterans Intertravel Association. My name is Jerry Haney, and I am now the Principal Chief of the Seminole Nation of Oklahoma. As you might be aware, the Seminole Nation recently had its election, and I was sworn into office just a few days ago.

In April 1976, the Court of Claims awarded the Seminole people $16 million for unfair dealings with the Seminoles in 1823.

The removal of the Seminoles to Indian Territory during the mid-to-late 1800s, most of the Seminole descendants now live in Oklahoma. By 1859, after 15 years of forcing Seminoles to move to the West, it is believed that only 60 Seminoles remained in Florida. While 3,376, or 98 percent of the Seminoles, had been moved West to Oklahoma. While many records indicate nearly all Seminoles left Florida, the BIA was required to make a study of the population in order to provide the Secretary of Interior with information on which to base a division of the judgment fund between Oklahoma and Florida Seminoles. For these purposes, the BIA used the 1906 enrollment data of the Oklahoma Seminoles based on this data the Oklahoma Seminoles should receive 75.404 percent. For the Florida Seminoles, it used the 1914 Florida Seminole Census. In order to be absolutely sure the Florida Seminoles were not undercounted. The BIA contracted with the Florida tribe to help research the population data, and as a result came up with the figures of 700, which is 24.596 percent.

It is important to understand for the purpose of an Oklahoma-Florida division of the award that 91 percent of the Oklahoma population is half blood or greater; and only 2 percentage less than one-fourth blood. This is according to BIA Research Report of November 26, 1976. We need to accept these facts on blood quantum. The Seminoles of Florida's statements on March 2, 1978 that the Oklahoma Seminole share of the award is as great as it is because there is no minimum blood quantum is incorrect. This enrollment standard was not used for dividing the award. The 1906 Dawes Act roll was. And that figure, again, was 2,146 for the Oklahoma Seminoles. The division and distribution of the judgment funds on the basis of population has been used consistently in cases of this kind and should be used here. The Florida Seminoles disagreed with this division and for 13 years the fund has remained undivided.

The Florida Seminoles' success in building a mighty economic and political entity are to be commended. Today the Florida Seminoles own more than 400 times as much tribal trust lands as the Seminoles in Oklahoma, who have 380 acres. We seek this same kind of economic growth for ourselves.

The history of the Seminole Nation is filled with persecution and dislocation at the hands of the Federal Government. The Seminole lands were taken from them, they were dispatched to Oklahoma and what is now well known as the Trail of Tears, often in chains and shackles. Over one-third of my tribe died while being pushed out of their native land.

The Florida Seminoles have introduced their own bill in the hopes that Congress will take away part of the Oklahoma share of the judgment fund and give it to the Florida group. There can be no logic to the claim of our brother Seminoles in Florida to our share of the judgment fund.

The Court of Claims in its judgment and the Congress by appropriation have attempted to repay the Seminoles of 1823. Let this share be fair and equitable. And please do not take away from the Oklahoma Seminoles that which the Secretary of Interior and the Court of Claims have said is our share. And I ask you to please

pass this legislation as soon as possible so these funds can begin benefiting our people who so desperately need help. The worst thing for Congress to do is to fail to act and leave the funds tied up and out of reach. It is simply not fair to the Seminole Nation of Oklahoma. This money can be the capital base upon which the Seminole Nation of Oklahoma can rebuild.

I thank you for giving me this privilege and listening to me.

[Remarks given in native tongue.]

[Prepared statement of Mr. Haney appears in appendix.]

The CHAIRMAN. Chief Miller.

STATEMENT OF HON. DWAYNE MILLER, BAND CHIEF, SEMINOLE NATION OF OKLAHOMA, WEWOKA, OK

Mr. MILLER. Thank you, Mr. Chairman.

I, too, am honored to be here to speak on behalf of my people. My name is Dwayne Miller. I am a full blood Seminole Indian and I am also the Band Chief of the Thomas Palmer Band of Seminoles of Oklahoma. I have served as our Training and Employment Director for the Seminole Nation and have been involved with this judgment fund as a tribal planner since the late 1970s.

It is also with some sadness that we appear before you, Mr. Chairman. We had been in hopes that we could be able to settle this matter among ourselves and with our relatives from Florida. No one knows more than we do the suffering that our people have endured in hopes of receiving these funds. We have tried. I have personally been involved on at least six occasions over the past 13 years in trying to negotiate a settlement with the Florida Seminoles. It is shameful that we can't sit down and logically divide this money. It always comes back to a stalemate. So we, too, understand, and we appreciate the 30 days that you have recommended that we might meet one more time. We will certainly take you up on that offer.

It has been many years since my people were forcibly removed from their indigenous homelands of Florida. History tells us that the removal of the Seminoles was one of the costliest of all the Indian Wars with America. More than one-third of the people died on the Trail of Tears.

Our Tribal history, passed down to us through generations, reminds us present day Seminoles of Oklahoma that the Seminole war in the last century was a very bloody and desperate period, when our people fought for their very existence.

Today, gentlemen, the Seminole Nation is again literally fighting for its existence as a tribal government due to severe socioeconomic conditions.

The Seminole Nation of Oklahoma presently suffers from an estimated 63 percent unemployment rate, from which these effects promote human misery in terms of alcoholism and drug abuse. Also a high percentage of our school children lead the State in learning disabilities and the high school drop out rate.

Limited Federal funds for housing, education, health care and other social needs simply are not sufficient to meet our growing needs.

I am here today with Chief Haney representing the tribal membership of the Seminole Nation in their unrelenting quest to receive the benefits that our proud ancestors paid so dearly for in lives and land.

The Seminole Nation has been waiting since 1823. Many of our elderly have passed on, they who hoped to be part of this award. The young people of our tribe have been taught the stories of the great Seminole wars and the removal, and they have become cynical and bitter in regard to the Florida judgment award. This stalemate prevents these tribal youth from seeking a better way of life through education and employment. Without the Florida judgment award moneys, the future of our tribe continues to be bleak and hopeless. The irony is that we do have funds, but we can't touch it.

We sincerely believe that the division of the fund between Oklahoma and Florida by the Secretary of Interior in 1977 and set forth in S. 1096 is more than fair and equitable to the Florida Seminoles. Yet many years have been used up in various attempts by the Florida Seminoles to claim an even larger share of the fund. All we have been able to do in Oklahoma is to resist those attempts which have concluded in stalemates. It is time that we call upon the trust responsibility of the U.S. Congress to once and for all resolve the situation by confirming the Secretary's well-founded division of the fund. The Seminole Nation of Oklahoma desperately needs its share of the funds to promote education, employment, and above all self-sufficiency.

It would appear to be a simple matter to divide the Florida award between the two entities, since we are historically the same people. Sadly, this is not the case. The Oklahoma Seminole and Florida Tribes have been unsuccessful in 13 years of negotiation.

We have no animosity toward our Florida relatives over the inability to divide the funds. We believe that the Congress must use its delegated trust responsibility to authorize the Secretary to act in this situation.

In fact, we are not asking Congress to make the decision. The decision has been made by the Secretary of the Interior. We simply are asking the Congress to confirm the action taken by the Secretary after careful study pursuant to Congressional direction.

In 1979 the Secretary's division was challenged in Federal court. The court confirmed that the Secretary had been given the authority by Congress to make that division and that the Secretary had divided it properly. Due to a technicality that had nothing to do with the results of research used by the Secretary to divide the money, the Secretary's decision was put on hold.

Congress should not be asking us to negotiate any further. Negotiations make sense when neither side is certain of its entitlement, or there are no clear cut rules for deciding a division. But this is not the case here. The rules are known, the courts have established them and Congress directed the Secretary to use those rules. The Secretary did so and made as precise a division as anyone could expect. The only reason we are here today is because Congress put a deadline on that Secretary that he could not meet and still do the detailed job required of him. Congress's job is to correct the deadline problem by passing legislation to confirm the decision that it delegated to the Secretary. That legislation is S. 1096.

In closing, we sincerely believe that the spirit of our ancestors, Osceola, Billy Bowlegs, Coucochee, continue to cry out for justice for our people.

The proud descendants of those Seminole warriors who fought so courageously for their Florida lands and were forced to walk the Trail of Tears would come before this panel now and ask for justice and do the right and honorable thing, and that is the passage of S. 1096.

Thank you.

[Prepared statement of Mr. Miller appears in appendix.]

The CHAIRMAN. Thank you, Chief Miller.

Mr. Niebell, would you care to add your words of wisdom?

STATEMENT OF PAUL M. NIEBELL, ESQUIRE, ATTORNEY FOR THE SEMINOLE NATION OF OKLAHOMA

Mr. NIEBELL. Mr. Chairman, my name is Paul M. Niebell, 910 17th Street, Northwest, Washington, DC. I am attorney for the Seminole Nation of Oklahoma. I have represented the Seminole Nation since 1930. that is a long time. And I am 88 years of age today. And I hope that the Indians can get together and settle this matter themselves. And I have tried my best with them to do so for several years. However, I hope it will not go into the court because it takes a long time, as you know, to settle matters in the court.

I have written a short synopsis of my statement. I believe the statement is already in the record.

The CHAIRMAN. It will be made part of the record.

Mr. NIEBELL. I never say anything unless I can back it up. So most of the material in this record is backup of what I have said in my seven pages. I have another statement here which I would like to review for you in favor of S. 1096.

The final judgment in the consolidated Seminole cases before the Indian Claims Commission was entered April 27, 1976 for the amount of $16 million. The judgment was for the value of the total number of acres, 29,758,226 acres in Florida aboriginally owned by the Seminole Nation as it existed in 1823 and 1832 when the Seminole Nation made treaties ceded this land to the United States. The consideration for the lands paid by the United States in the treaties was extremely low. And the Commission held that the consideration paid was wholly unconscionable, and the additional $16 million represented the difference between what the United States paid in the treaties and the actual fair market value of the lands at the times of the cession.

The Commission found and held that the Seminole Nation of Oklahoma and the Seminole Indians of Florida composed the Seminole Nation as it existed in 1823 and 1832, and that the judgment belonged to the members of the Seminole Nation and their descendants living as of 1823 and 1832. The Seminole Nation was one entity at that time until the beginning of what was known as the Seminole War of 1835, and ended in 1842. The war split the nation into two groups: First, the great majority of the Seminoles who were removed by the military forces of the United States to Indian Territory, now a part of the State of Oklahoma; second, the few individual Seminoles, who by their own free choice, elected to remain

in Florida after many efforts of the United States to remove them failed. The evidence admitted with my statement shows that the great majority of the Seminoles were removed to Indian Territory during the period from 1838 to 1859 when further efforts to remove them ceased.

The report of the Commissioner of Indian Affairs for the year 1844 shows that by actual count 3,136 Seminoles were removed to the West. This count did not include any slaves. The investigation of General W. J. Worth in charge of the military operations in Florida revealed that there remained in Florida a total, at that time, of 300 Seminoles on November 17, 1843. His report, dated November 17, 1843 from St. Augustine stated,

> The foregoing has been obtained from many Indians at different times during the past year and it is believed to be correct, quite as likely above as below the real number.

In my statement also is the statement of Captain J. T. Sprague, then in charge of the Indian Affairs in Florida,

> That the number of the Indians in Florida on September 16, 1845 was 360. But of this number there were 12 Creeks, 4 Uchees, they were Creeks, and 4 Choctaws who were not Seminole.

In my statement also is the report of M. Duval, Seminole Subagent of October 15, 1846 in which he states with respect to the Western countries,

> The climate is variable and the bleak blasts of winter driving across those prairies are particularly severe on the Seminoles, coming from so genial a climate as Florida. Such a thing as a snow storm, they say, never was seen. Last winter was one of the severest ever experienced in the West, and the big frosts which were sent by the Great Spirit caused much suffering, and not a little grumbling among them, and induced many to deny the words and doubt the wisdom of their Great Spirit who promised them in exchange for Florida a country better suited to their habits of life.

He also stated,

> The Seminoles yet remaining in Florida are the subject of considerable solicitude to their Western brethren. They desire them to remove and would in assist in persuading them to do so, being convinced that they would be better off united with their tribe than isolated as they are.

My statement at pages 6 and 7 sets forth the many efforts of the Western Seminoles to get the Florida Seminoles to join them in the West. These efforts began in 1838 and continued until 1859. The documented evidence in my statement shows that the last efforts were made in 1858 and 1859. In 1858 the Creek and Seminole Indian agents in the West traveled to Florida with 40 Western Seminoles and 6 Creeks, and after 3 months of searching the Everglades, succeeded in persuading Billy Bowlegs and 164 of his followers to emigrate to the West. In 1859 Colonel Rector, the Indian agent, with the aid of Billy Bowlegs and 8 more Seminoles again traveled to Florida, and in the Spring of 1859, succeeded in emigrating to the West 75 additional Florida Seminoles.

With the total of 3,136 removed to the West in 1844 and the additional 240 removed in 1858 and 1859, there would be a total of 3,376 Florida Seminoles removed to the Western lands by 1859. Of the 300 remaining in Florida in 1843 and 1845 and reported by General Worth and Captain Sprague, the 240 removed in 1858 and 1859 would leave but 60 Seminoles remaining in Florida in 1859. This figure ties in closely with an article contained in the National

Geographic Magazine, an issue in December 1956 written by Louis Capron, the author of many articles on the Florida Seminoles wherein Capron stated that with the emigration of Billy Bowlegs to the West there were 150 Seminoles remaining in Florida. Capron failed to reduce this number by the 75 Florida Seminoles removed in 1859. After deducting the 75 from Capron's 150, would leave 75 Florida Seminoles still in Florida in 1859.

Considering the above historical data, which is well documented, what has been the established rule laid down by the Indian Claims Commission and the Court of Claims as the proper method of dividing the judgment funds between the two groups.

In my statement at pages 2 and 3 the Indian Claims Commission, I cite the Indian Claims Commission case of The Blackfeet and Gros Ventre Tribes and the Assiniboine Tribe and Sioux Tribe as Intervenors versus the United States, 18 Indian Claims Commission, 241. In that case the intervenors tried the same method that the Florida group have submitted to the Congress in their bill. The Indian Claims Commission said this,

> To apply such a rule to Indian lands would lead to an unjust result in most cases. Indian rights in land are tribal in nature and not individual. If we tried to equate tribal rights with individual rights and thereby create an equal interest in an area among the tribes using and occupying it, we would be ignoring the basic fact of Indian use and occupancy. We would be creating a common law concept of title in an area where such concept has never grown by custom or usage. The smallest tribe would be entitled to as much as the largest one. To do this would be contrary to reason since a subsistence use of land necessarily implies a use in proportion to numbers. Where there is no evidence of intention to the contrary and no language stating what interest shall be taken, we think the proper and just manner of dividing tribal interests in a given area is by population as of the date of the cession, or an average population near that date, whichever is more reasonable under the particular circumstances.

Now that law, that provision, was followed in another case, which I have cited, by the United States Court of Claims. Under these decisions the proper and just manner of dividing tribal interests in a given area is by population as of the date of cession or an average population near that date, whichever is more reasonable under the particular circumstances. Following this principal the Florida Indians would be entitled at best to about 5 percent of the Seminole judgment fund.

The Department of Interior based its division of the Seminole judgment money on a roll of each group as of 1914, which in my opinion is much more favorable to the Florida Seminoles than to the Seminoles of Oklahoma. Now, they have agreed to accept that because in the Indian Judgment Division Act, the Secretary of the Interior was authorized and directed to submit a plan to Congress. That plan was submitted and it was late because the date of the submission was more than 180 days after the date of the Act required by the Act. So it was put on hold, but in a decision of the court against Andress, the Secretary, the U.S. District Court upheld his right to make such a division, based upon an investigation. The only thing that was reversed in that case was the fact that the time had run out, and they put it on hold and said, well, we will let Congress work on that. But as of the authority of the Secretary under that Act to make this distribution, there is no question about it. The court has passed on that.

Now, another point that keeps coming up all the time, the issue of offsets. In a letter to you, Senator Inouye, dated April 25, 1988, James E. Billie, Chairman of the Seminole Tribe of Florida suggested that because of the benefits received by the Oklahoma group, which are not shared by the Florida Seminoles, the judgment received was significantly reduced. This statement is in error. It cropped up in a House hearing as it will be testified to before you in his statement, that they say that the original judgment entered by the Commission on May 13, 1970 was for the value of 23,892,626 acres ceded by the Seminole Nation to the United States in the 1823 treaty and recovery was denied for the 5,865,600 acres of the reservation lands ceded by the Seminole Nation in the 1832 treaty because of a claimed offset of 2,095,339, the value of 2,094,809.39 acres acquired by the Seminole Nation of Oklahoma in the 1856 treaty.

The Commission found that the fair market value of the 23 million acres cession of 1823 was $12,500,000 and deducted therefrom $152,500 consideration paid by the United States under the 1823 treaty, leaving a net final judgment of $12,345,500 which was subject to offsets claimed by the United States. In a further trial on offsets the Indians Claims Commission on October 28, 1970 allowed the government offset of only $84,719.30 expended by it for the purchase of lands for the Florida Indians, reducing the judgment by that amount to the net final judgment of $12,262,780.63. Counsel for both parties appealed this whole thing to the United States Court of Claims. One of the most important issues on the appeal was the failure of the Indian Claims Commission to award the judgment for the reservation lands of 5,865,600 acres and the allowance against that cession of 2,094,309.36 offset against the claims of the plaintiff.

After oral argument on the issues the U.S. Court of Claims on February 28, 1972, reversed and remanded the final judgment of this Commission with instructions to provide more detailed findings of fact. The case then was compromised by the parties for a total of $16 million. The stipulation, this is important, the stipulation for entry of final judgment signed by both parties, that is by the Department of Justice, too, and approved by the Commission provided as follows:

> That no offset claims are to be asserted against said judgment so entered and the United States hereby waives any and all claims for offsets which have been asserted or could have been asserted against the plaintiffs in this case under the provisions of Section 2 of the Indians Claims Commission Act. However, the United States reserves and does not waive its right to assert offsets arising after October 22, 1970, if any, and any other Seminole case pending before the Commission.

On April 27, 1976 the Indian Claims Commission in accordance with the stipulation entered a final judgment as against the United States for $16 million in favor of the Seminole Nation as it existed in 1823 and 1832. Thus the waiver of the offsets against the plaintiffs cancelled the following offsets of the Indian Claims Commission that they had charged against this judgment: $152,500 the consideration paid by the United States under the 1823 treaty—that was a payment under the treaty; the $2,094,809.39, the alleged value of the 1856 lands acquired by the Seminole Nation of Oklahoma under the treaty of 1856; the $84,719.37 that was used by the

United States for the purchase of lands for the Florida Indians. So we wiped out by this stipulation $2,332,028.76. In other words, we wiped out all of the offsets that the Commission had allowed against the case in this stipulation. So the final judgment of $16 million represented the value of the total of 29,758,226 acres of Florida land ceded to the United States by the Seminole Indians of Florida and the Seminole Nation of Oklahoma as it existed in 1823 and 1832.

So the judgment of the Indian Claims Commission in the amount of $12,262,780.62 appealed from and settled by the stipulation of the parties was increased by $3,737,019.37 or to $16 million. And in addition offsets against the final judgment of the Commission was knocked out and waived by the United States. So no benefits received by the Seminole Nation of Oklahoma reduced the amount of the $16 million judgment or influenced it in any way, and both the Florida Seminoles and the Seminole Nation of Oklahoma have their own respective interests in this increased judgment money.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Niebell appears in appendix.]

The CHAIRMAN. Thank you very much.

It is your contention that the funds that were used to acquire lands in Oklahoma did not in any way diminish the final Commission award?

Mr. NIEBELL. that is correct.

The CHAIRMAN. Just for the record, in determining the present census how do Oklahoma Seminoles determine the census? Is there a blood quantum?

Mr. NIEBELL. Yes; it was established in 1906.

The CHAIRMAN. No; I mean today.

Mr. NIEBELL. Yes; today I suppose they do it by blood quantum, yes.

The CHAIRMAN. Is it not by descendancy?

Mr. NIEBELL. I think the amount is one-fourth, isn't it?

The CHAIRMAN. One-fourth, I believe, is Florida, is it not?

Mr. MILLER. Senator, it is by descendancy of the Dawes Roll Commission.

The CHAIRMAN. In the case of Florida Seminoles it is 25 percent?

Mr. NIEBELL. In other words they would have to go back to the 1906 roll and determine that they were related to one of those enrolled at that time.

The CHAIRMAN. Although the bills do not mention Freedmen, and your testimony does not mention Freedmen. The testimony mentioned by Florida Seminoles mentioned Freedmen. What relationship do Freedmen have with Oklahoma Seminoles?

Mr. NIEBELL. In 1866 they were taken into their tribe. It was after the Civil War, and feeling ran high at that time and the Seminole Nation, as such, never owned any slaves. The individual Seminole owned the slaves, but nevertheless they were taken into the tribe under treaty in 1866.

The CHAIRMAN. Now, if I may ask Chief Haney, what is the present day relationship, if any, with the Freedmen? Do you have any relationship with the Freedmen?

Mr. HANEY. Yes, Mr. Chairman; the Freedmen are members of our tribe. There are two bands. Out of the 14 there are two bands

of the Freedmen Band. They have voting privileges but they do not share in any of the benefits of the programs. They became members of the tribe in 1866 and are in no way involved in this 1823 treaty.

The CHAIRMAN. Would they share in this award?

Mr. HANEY. We do not feel that they do. No, sir.

The CHAIRMAN. But it is your contention that the Freedmen will not share in this award?

Mr. HANEY. At this time we haven't addressed that. It is something that we will have to take up with the tribal members.

Mr. NIEBELL. Mr. Chairman, I might say that as the judgment was awarded, it was a judgment for this Seminole Nation as it existed in 1823 and 1832. So in one of the Creek cases I cite in my statement it is also stated that in a claim that arose in 1814 it said,

> We hold that in the event of an award for such an injury it should be for the benefit of the descendants of the Creek Nation, as it was constituted in 1814 and recognized by the United States in the treaty of cession of that year. The method of determining the identity of such descendants to be provided by Congress in making the appropriation to pay the award.

Now, that decision has been followed since that time.

The CHAIRMAN. Well, I thank all of you very much. As I indicated, we hope that within the next 30 days some resolution can come about. If not, this committee will make its own recommendation and submit its decision to the Senate.

Mr. NIEBELL. Mr. Chairman, would you like to have a copy of the compromised settlement for the record?

The CHAIRMAN. It will be made part of the record.

Mr. NIEBELL. And also there is some vital data on the population of the Florida and the Oklahoma Indians, which I would also like to make part of the record. And also this article by Louis Capron in the 1956 December issue of the National Geographic Magazine, I would like to present for the record.

The CHAIRMAN. All of your statements and documents will be made part of the record.

[Documents to be supplied appear in appendix.]

The CHAIRMAN. However, I should advise you that as one member of this committee, I am not too impressed with body counts submitted by military officers. [Laughter.]

History has shown us that military officers are not good in counting bodies.

I thank you very much.

Next may I call upon the chairman of the Seminole Tribe of Florida, Hollywood, FL, the Honorable James Billie. He will be accompanied by his general counsel, Jim Shore, and by Jerry Straus, Esquire of the law firm of Hobbs, Straus, Dean & Wilder. Chairman Billie, welcome, sir.

STATEMENT OF HON. JAMES BILLIE, CHAIRMAN, SEMINOLE TRIBE OF FLORIDA, HOLLYWOOD, FL, ACCOMPANIED BY JIM SHORE, GENERAL COUNSEL, SEMINOLE TRIBE OF FLORIDA; JERRY STRAUS, ESQUIRE, HOBBS, STRAUS, DEAN & WILDER

Mr. JAMES BILLIE. Mr. Chairman. With your indulgence, I would like to present a portion of my statement orally, but ask that the entire statement be made a part of the record of this hearing.

The CHAIRMAN. All of your prepared statements will be made part of the record. And if you wish to summarize, you may do so, sir.

Mr. JAMES BILLIE. Thank you.

My name is James Billie. I am the Chairman of the Seminole Tribe of Florida. With me this afternoon is Mr. Jim Shore—he's our legal counsel—and Jerry Straus, our Washington legal counsel. They will assist me in answering any technical questions on my statement. On behalf of my tribe, I would like to express appreciation for the opportunity to present our views on the proposed division of the $16 million judgment award by the Indian Claims Commission to the Seminole Nation as it existed in Florida in 1823.

Mr. Chairman, the history of the Seminoles is a tragic history. Both the Florida and Oklahoma Seminoles have endured the loss of their Florida homeland and over a century of grinding poverty. Those of us who resisted removal to Oklahoma and remained in Florida by avoiding the Federal soldiers and hiding out in the Everglades, were virtually ignored and left to fend for ourselves in a hostile environment far different from our traditional homeland to the North in Florida. It is only in very recent years that we have been able to improve the economic lot of our people through tribal business ventures.

Those of us who accepted the forced removal to Oklahoma, who received treaty benefits and a new land base in return for the lands lost by all, suffered the hardship of the long march to Oklahoma and later suffered from the now discredited policy of allotment which destroyed the tribal estate in Oklahoma while failing to provide sufficient protection for individual Seminoles who received the allotted tribal lands.

While we in Florida have a sharp disagreement with our Oklahoma brethren over the division of the Claims Commission's award, we have not lost sight of the fact that we are all one people. We have always been willing to work out a compromise and we have come close to an agreement on a division several times in the past. Each time, for various reasons, it has eluded us. As a result of the recent informal preliminary discussions we have had with some of our Oklahoma brethren, we believe that it still may be possible in a relatively short time, without any prejudice to the possibility of legislative disposition by the 101st Congress in its present session or early in the next session, to have agreement reached by the two groups. We are glad you agree that the two parties should be given one more chance to work this out before Congress imposes a solution that may be acceptable to neither group and that is certain to create bitter feelings on one side or the other. If negotiations fail again, we agree that the time has come for Congress to act.

Mr. Chairman, the claim before the Indian Claims Commission is the only claim the Florida Seminoles have ever had against the United States. We know that a long time has passed since the award was made, and it is regrettable that a controversy over its division is still continuing. While the time has come to bring that controversy to a close, if agreement still proves impossible, we earnestly hope that Congress will fashion a remedy that is fair to all.

[Remarks given in native tongue.]

[Prepared statement of James Billie appears in appendix.]

The CHAIRMAN. Thank you, sir.

Mr. Shore, would you care to add anything to this?

Mr. SHORE. Mr. Chairman, I have no separate statement to make. My role here is to assist Chairman Billie in answering any questions that the committee may have. Thank you.

The CHAIRMAN. Thank you, sir.

Mr. Straus.

Mr. STRAUS. I also am here just to assist Chairman Billie and to answer any questions the committee may have.

The CHAIRMAN. Chairman Billie, have you had any meetings with the Oklahoma Seminoles?

Mr. JAMES BILLIE. Have we had any meetings?

The CHAIRMAN. Yes; in recent months?

Mr. JAMES BILLIE. I am not quite sure how long it has been. The first meeting that I recall after the award was back in the 1970s. And then in 1979—prior to 1979 there was a big push by our people and the Oklahoma brethren to try to get together and settle this matter. And we kept coming to a stone wall. And for some various reason or another, we could not come to an agreement, and the subject was always saying, you had some land and you lost it. It is not our fault that you lost it and all this thing.

We tried it again in 1979 and it didn't work. And I think a couple more times, but what the Seminole Tribe of Florida did is we've been out there in Florida trying to take care of ourselves, and we were really having high hopes for this particular money to assist us in maybe new ventures. They didn't come forth, so we decided to just pull ourselves by our own bootstraps and go forth and forget about the land claims and if there was a question of when should we have meetings, we would go and meet. And we started trying to develop ourselves after 1980.

And the reason why we did not go to anymore meetings after the 1980s is that the Oklahoma delegation were having problems with their own delegation. When they elected a chief, another one would step in and sort of kick him out, so to speak, and never knew which government to deal with. And I have been working with Uncle Sam long enough to know that he honors different governments and tries not to intervene in what they do except to assist once and awhile. So we Seminoles, then, are considered a nation, a different government from the Oklahoma Nation, and they have a different government. So what we did is we did not try to go in there and pose ourselves. We stayed away until they form a government that they could honor. So now, it seems like they have an elected chief, and we are honored to work with that chief if they remain in power. And that is where we've been.

The CHAIRMAN. When was the last time that the Florida Seminoles met with the Oklahoma Seminoles?

Mr. JAMES BILLIE. Last July, and had an informal meeting yesterday, just to the two chiefs.

The CHAIRMAN. I assume you have met Chief Haney in back of you?

Mr. JAMES BILLIE. First time, yesterday.

The CHAIRMAN. When is the next meeting scheduled for? Because you have said that you want to meet with the Oklahoma Seminoles.

Mr. JAMES BILLIE. As soon as I go home and see the smoke signals. No. As soon as they call us.

The CHAIRMAN. So you are waiting for his call and he's waiting for your call.

Mr. JAMES BILLIE. He probably is, but we will instigate it if we have to.

The CHAIRMAN. Well, 30 days is not a long time. I just hope that within 30 days something will come about. If not, as I indicated, we will in our responsibility be compelled to act.

And so, if you could, you should say hello to Chief Haney.

Mr. JAMES BILLIE. Hello, Chief Haney.

Mr. HANEY. Hello, Chief Billie.

The CHAIRMAN. I thank you very much, sir.

Mr. JAMES BILLIE. Thank you.

The CHAIRMAN. Now, may I call upon the Honorable Danny Billie, spokesperson for the Traditional Seminole Nation of Tamiami Trail. He'll be accompanied by Mr. Curtis G. Berkey, Esquire, of Washington.

STATEMENT OF HON. DANNY BILLIE, SPOKESMAN FOR THE TRADITIONAL SEMINOLE NATION, TAMIAMI TRAIL, FL, ACCOMPANIED BY CURTIS G. BERKEY, ESQUIRE, INDIAN LAW RESOURCE CENTER

Mr. DANNY BILLIE. Good afternoon, Mr. Chairman.

My name is Danny Billie. I am the spokesperson for the Traditional Seminole Nation of Florida. With me today is Curtis Berkey, our attorney from the Indian Law Resource Center to help me with any legal or technical questions.

We are glad for the opportunity to testify on the bills to pay out the money awarded by the Indian Claims Commission in 1976. We have prepared a written testimony which I will summarize this afternoon. We ask that our written statement be put in the hearing record.

We are against the S. 1096 and S. 1336 in their current forms. We do not want to be included in the distribution of the money awarded by the Indian Claims Commission. We do not want to give up our land rights in return for money. We have existing rights and claims to our homeland in Florida. We are concerned that the *Indian Claims Commission* case and distribution of this money may impair our rights and claims to this land.

We have drawn up an amendment to the bill which ensures that our rights are not harmed by *Indian Claims Commission* case, or by the distribution of this money. We ask your support of this amendment.

Let me explain who we are and why amending the bill is the right thing to do. We are an Indian nation that has always been independent and free. Our members live in camps and villages throughout the Traditional Seminole territory in Southwestern Florida near the Everglades and Big Cypress area. Many of our members are concentrated around the Tamiami Trail. We have no reservation or other land area that is recognized by the United States. But we continue to live on original Seminole land. We hold our lands in common as members of the Traditional Seminole

Nation. We live according to the traditional ways and customs of our ancestors. We have never asked anything of the United States other than to be left alone to live according to our traditional culture, religion and government. We are a separate group from the Seminole Tribe of Florida and the Miccosukee Indian Tribes of Florida. Our people are not members of either of these tribes. Our lands are guaranteed to us by treaties and agreements with the United States and others.

In 1842, for example, our nation and the United States made an agreement to end the war between our nations. In exchange for peace, the agreement said that 5 million acres of land would be recognized as belonging to the Seminole Nation. This agreement is still valid today, but only almost all of our lands have been taken from us illegally and given to others. The treaties and promises have been broken again and again. As a result, many generations of our people have not had lands that are needed for homes, or for hunting and fishing. Because we have been deprived of that land that is rightfully ours, it has been very difficult for us to secure a good life for our people. We have suffered greatly as our lands have been taken away. And we have been made strangers in our own lands. Especially in the past years we are being pushed out by uncontrolled commercial and residential development in Southwestern Florida. Our lands are being polluted, abused and destroyed by this development.

We are not here today asking Congress to resolve our historical land rights and claims. We need land to survive and at the right time we will seek a just and fair resolution of our claims that our lands have been wrongfully taken and destroyed. We are confident that a reasonable and fair settlement that meets our needs can be reached. Our purpose today is to ensure that our rights and claims are preserved and protected against this damaging affect of the Indian Claims Commission.

Let me explain why the Indian Claims Commission is a threat to our rights. To us it is very simple. If we accept money for the taking of our lands, we will lose the land. It is sale, pure and simple. The Indian Claims Commission says certain Seminole people are entitled to additional money for the lands supposedly taken by the United States. But these are lands we still live on and claim to own. Our homes and the areas where we hunt, fish and gather cypress are included in the lands covered by the case in the Commission. If we accept the money, we would be giving up our claims to the land. We do not want to sell our lands this way.

Therefore, we ask to be removed from the plan to distribute this money. We do not want to stand in the way of the other tribes receiving the money they want. These tribes have settled their land claims and apparently feel that their rights are not at risk if they accept this money. But we are concerned that the courts of the United States may use the *Indian Claims Commission* case against us if the money is paid out to the other tribes. As a result, we must oppose distribution of the money to them unless the bill is amended we have proposed.

We are also concerned that some of the rulings of the Indian Claims Commission might be used to defeat our claims and rights. We understand that the Commission has ruled that we do not have

any right to the land guaranteed to us in the 1842 agreement. The amendment we propose will ensure that nothing that occurred in the Commission will be used against us. It will remove all uncertainty and doubt about the effect of the case on our rights. We believe our amendment is fair in these circumstances. We have fought against the Indian Claims Commission for 28 years. We have never made a claim. We did not authorize the filing of the claim. We were not represented by the persons who filed it, and we have tried to remove ourselves from it at every opportunity. From the very beginning we believed that the case was a threat to our rights. We never joined in the case. To protect our rights, our group and others like us filed objections with the Commission. We filed lawsuits and we opposed the case every chance we had. We were never given a fair hearing by the Commission and the courts dismissed our objections. One court even ruled that our property rights were not protected by the Constitution.

All of our efforts to avoid the case were unsuccessful. We are not asking Congress to prevent further harm to our rights. We believe that our amendment is supported by reasons of justice and fairness, particularly in the light of our long-opposed opposition to the claim case. Our land rights and claims are at risk if this bill passes without the amendment we propose.

Thank you for this opportunity to speak to you today. We will be happy to answer any questions, if you have any.

[Prepared statement of Mr. Danny Billie appears in appendix.]

The CHAIRMAN. I thank you very much, Mr. Billie.

Are you, by any chance, related to Chief Billie?

Mr. DANNY BILLIE. You mean James Billie?

The CHAIRMAN. Yes.

Mr. DANNY BILLIE. No; he is a different clan than I am.

The CHAIRMAN. It was 2 years ago we enacted legislation relating to a water claim by the Seminole Nation in Florida. And at that time, working together with the attorneys for the Traditional Seminoles we came up with a provision to protect the rights of Traditional Seminoles. And similar language is now found in S. 1336, and I would like to know if that language would suffice, Section 9(f) on page 7? It would be amended this way: Payment of any claim under this act shall not be construed as extinguishing any individual right, title, interest or claim to lands, or natural resources in the State based on use, or occupancy, or acquired under Federal or State law by any individual Indian who is not derived from or through the tribes, their predecessors or some other American Indian tribe. Would that suffice, sir? It is similar to the language that we worked out with the lawyers for the Traditional tribe.

Mr. DANNY BILLIE. I will let Mr. Curtis Berkey answer that.

Mr. BERKEY. I do not believe that goes quite far enough. This section refers exclusively to individual rights, title and interest. The Traditional Seminoles assert an interest as a group, as an Indian nation or tribe. I believe the language you are referring to in the agreement 2 years ago included both individual and group rights protection.

So, we are open to working out acceptable language with the committee and the staff to make sure that our rights are protected.

The CHAIRMAN. May I ask that you get together with the staff to work out something?

Mr. BERKEY. Yes.

The CHAIRMAN. Mr. Billie, I can assure you that I will not preside over any proceeding that will deny you any rights, sir.

Mr. DANNY BILLIE. Thank you, Mr. Chairman.

The CHAIRMAN. I will do everything I can to see that your rights are protected.

Mr. DANNY BILLIE. Thank you, sir.

The CHAIRMAN. And I thank you very much.

That concludes the hearings, and may I once again call upon the Florida Seminoles and the Oklahoma Seminoles to get together at the earliest to begin their discussions. And if you are not able to reach any resolution will you so advise us so we can schedule our meetings to act upon this measure?

[Chiefs nodding heads.]

The CHAIRMAN. With that, I thank you all for your presence and for your sharing of your testimony with us. The hearing is adjourned.

[Whereupon, at 4 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT BY SENATOR DAVID L. BOREN

SELECT COMMITTEE ON INDIAN AFFAIRS

SEPTEMBER 15, 1989

I AM VERY PLEASED TO TESTIFY TODAY ON BEHALF OF S. 1526, A BILL THAT WILL ENABLE THREE TRIBES IN OKLAHOMA TO ENTER INTO A UNIQUE CONTRACT WITH THE STATE THAT WILL ADDRESS THE ISSUE OF WHERE TO HOUSE THE STATE'S GROWING PRISON POPULATION AS WELL AS PROVIDING A MUCH NEEDED OPPORTUNITY FOR DEVELOPMENT FOR THESE TRIBES.

THIS BILL, IN EFFECT, SERVES TWO PURPOSES. ONE, IT IS A GREAT ECONOMIC DEVELOPMENT OPPORTUNITY FOR THE KIOWA, COMANCHE AND APACHE TRIBES TO UTILIZE THE BUILDINGS AND FACILITIES OF THE OLD FT. SILL INDIAN SCHOOL. THE ECONOMIC PRESSURES FACING THE SOUTHWESTERN PART OF MY STATE ARE STAGGERING, AND THESE TRIBES HAVE BEEN WORKING DILIGENTLY TO FIND A WORKABLE OPPORTUNITY TO USE AND DEVELOP THEIR JOINT RESOURCES.

THE FT. SILL INDIAN SCHOOL, LOCATED NEAR LAWTON, OKLAHOMA, IS COMPRISED OF MORE THAN 115 ACRES OF TRIBAL LAND AND A NUMBER OF LARGE AND SMALL BUILDING ON THE PREMISES. THE SCHOOL, FORMERLY OPERATED BY THE BUREAU OF INDIAN AFFAIRS, WAS CLOSED AND CONVEYED BY THE UNITED STATES TO THE OWNERSHIP OF THE KIOWA, COMANCHE AND APACHE TRIBES IN MAY OF 1981. SINCE THEN, THEY HAVE ESTABLISHED

THE KIOWA*COMANCHE*APACHE LAND USE COMMITTEE AND HAVE BEEN WORKING TOWARD ECONOMIC SELF-SUFFICIENCY SO THAT THEY CAN PROVIDE NECESSARY PROGRAMS AND SERVICES FOR THEIR MEMBERS.

THE SECOND PURPOSE THAT THIS LEGISLATION SERVES IS TO ENABLE THE STATE OF OKLAHOMA, THE OKLAHOMA DEPARTMENT OF CORRECTIONS, TO PROVIDE A PARTIAL SOLUTION TO THE PROBLEM OF THE STATE'S GROWING PRISON POPULATION. BY UTILIZING THE FT. SILL FACILITIES FOR A MINIMUM SECURITY PRISON WHICH WILL HOUSE ABOUT 100 INMATES INITIALLY, THE STATE CAN PROVIDE A MUCH NEEDED FACILITY TO HOUSE WORK CREWS IN THE LAWTON/DUNCAN AREA THAT THE DEPARTMENT OF TRANSPORTATION COULD AND WOULD UTILIZE FOR WORK IN THAT AREA. THE PRISON COULD EVENTUALLY HOUSE UP TO 400 PERSONS.

I AM PLEASED TO BE ABLE TO OFFER THIS LEGISLATION ON BEHALF OF THE KIOWA*COMANCHE*APACHE LAND USE COMMITTEE WITH SUPPORT FROM THE STATE DEPARTMENT OF CORRECTIONS, GOVERNOR BELLMON, THE LAWTON DEPARTMENT OF COMMERCE, THE CITY COUNCIL AND MANY OTHERS. THE FUNDING FOR RENOVATION OF THE SCHOOL FOR THIS WORK STATION HAVE ALREADY BEEN OBTAINED BY THE OKLAHOMA LEGISLATURE BUT IS DEPENDENT ON THIS LEGISLATION TO ENABLE THE CONTRACT TO BE DRAWN UP.

MR. PRESIDENT, A UNIQUE FEATURE OF OUR POLICIES FOR NATIVE AMERICAN LANDS IS THAT THE INDIVIDUAL TRIBES HOLD CIVIL AND CRIMINAL JURISDICTION OVER THESE LANDS. OBVIOUSLY, THE STATE NEEDS TO HOLD JURISDICTION IN THIS SITUATION TO SUCCESSFULLY ADMINISTER THE OPERATIONS OF A PRISON FACILITY WHICH WOULD INCLUDE INDIAN PRISONERS AND INDIAN EMPLOYEES, AND IN THIS CASE, THE TRIBES WANT TO WAIVE THEIR JURISDICTI- OR THE LENGTH OF THE CONTRACT. LET ME EMPHASIZE, HOWEVER, THAT THE TRIBES ARE WAIVING THEIR CIVIL AND CRIMINAL JURISDICTION BOTH VOLUNTARILY AND ONLY FOR THE LENGTH OF THE TERM OF THE CONTRACT. THIS IS IN NO WAY INTENDED TO DO ANY MORE. AT THE EXPIRATION OF THE CONTRACT, IF IT IS NOT MUTUALLY RENEWED, SUCH JURISDICTION WILL RETURN TO THE UNITED STATES AND THE KIOWA, COMANCHE AND APACHE TRIBES.

MR. CHAIRMAN, THIS IS NOT THE ONLY SITUATION WHERE TRIBES ARE USING CREATIVE IDEAS TO ENHACE ECONOMIC DEVELOPMENT VENTURES. BUT THIS CONTRACT IS SO CLOSE, THE FUNDING IS AVAILABLE, AND ALL THAT STANDS IN THE WAY IS THIS TECHNICALITY. CONGRESSMAN MCCURDY HAS INTRODUCED ALMOST IDENTICAL LANGUAGE IN THE HOUSE OF REPRESENTATIVES, AND SENATOR NICKLES AND I ARE PLEASED TO BE WORKING TOGETHER TOWARD THIS GOAL IN THE SENATE. AGAIN, I APPRECIATE THE OPPORTUNITY TO ADDRESS THIS ISSUE BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS TODAY.

TESTIMONY BY SENATOR DAVID L. BOREN

SELECT COMMITTEE ON INDIAN AFFAIRS

SEPTEMBER 15, 1989

MR. CHAIRMAN, I APPRECIATE YOUR CALLING THIS HEARING TODAY ON AN ISSUE THAT I CONSIDER TO BE VERY IMPORTANT TO MY CONSTITUENTS IN OKLAHOMA. I AM PLEASED TO TESTIFY BEFORE YOU TODAY ON BEHALF OF THE SEMINOLE NATION OF OKLAHOMA.

ON JUNE 1ST OF THIS YEAR, I WAS PLEASED TO JOIN MY COLLEAGUE, SENATOR NICKLES, IN INTRODUCING LEGISLATION TO HELP BRING ABOUT A SETTLEMENT AND TIMELY DISTRIBUTION OF FUNDS THAT WILL GREATLY BENEFIT THE SEMINOLE NATION AND THE DIFFERENT TRIBES THAT ARE AFFILIATED WITH IT. THESE FUNDS WERE AWARDED TO THE SEMINOLES AS THE RESULT OF A 1976 DECISION BY THE INDIANS CLAIMS COMMISSION IN DOCKETS 73, 73-A, AND 151. IN THESE DOCKETS, $16 MILLION WAS AWARDED TO THE SEMINOLES FOR LANDS TAKEN BY THE U. S. GOVERNMENT IN 1823. THIS MONEY WAS APPROPRIATED BY CONGRESS ON JUNE 1, 1976, AND HAS SINCE ACCRUED INTEREST AND CURRENTLY TOTALS MORE THAN $40 MILLION. IT IS CURRENTLY HELD IN A TREASURY ACCOUNT EARMARKED FOR THE SEMINOLE NATION.

MR. CHAIRMAN, SINCE 1976, THE OKLAHOMA AND FLORIDA SEMINOLE TRIBAL LEADERS HAVE TRIED IN GOOD FAITH TO REACH AN AGREEMENT ON THE DIVISION OF FUNDS. TENTATIVE

AGREEMENTS HAVE BEEN REACHED AND THEN DISSOLVED. WHEN THE FUNDS ARE DISTRIBUTED, THE TRIBES WOULD SUBMIT TO AND RECEIVE APPROVAL FROM THE BUREAU OF INDIAN AFFAIRS ON THEIR PLANS FOR THE USE OF THE FUNDS. THIS WOULD ALLOW THE SECRETARY OF THE INTERIOR TO OVERSEE AND APPROVE THE DISTRIBUTION OF THE TRUST FUNDS TO THE TRIBES.

MR. PRESIDENT, THE OKLAHOMA SEMINOLES ARE CURRENTLY FACING SEVERE ECONOMIC DEPRESSION, AS IS OUR ENTIRE STATE. THE TRIBAL COUNCIL HAS PLANS FOR DISBURSEMENT OF THE FUNDS DESIGNED TO BENEFIT THE ENTIRE AREA OF SEMINOLE COUNTY. THIS HAS BECOME A MORE TIMELY ISSUE BECAUSE THE SEMINOLES HAVE WAITED THIRTEEN YEARS FOR THIS MONEY TO BE DISBURSED, AND MUCH LONGER THAN THAT FOR THE DECISION TO EVEN BE REACHED.

I WOULD LIKE TO THANK THE CHAIRMAN FOR RECOGNIZING THE IMPORTANCE OF THIS ISSUE AND FOR SCHEDULING THIS HEARING TODAY. CONGRESS MUST ACCEPT THE RESPONSIBILITY OF CARRYING OUT THE INTENTIONS OF OUR GOVERNMENT. LEGISLATIVE INTERVENTION IS NOT ALWAYS APPROPRIATE, BUT IT IS NECESSARY NOW TO BRING THIS MATTER TO AN ACCEPTABLE CONCLUSION. WITH THE SUPPORT OF THIS COMMITTEE AND THE BIA, WE BELIEVE THAT SETTLING THIS AWARD DIVISION WOULD BE AN IMPORTANT STEP IN IMPROVING THE ECONOMIC CONDITION OF THE SEMINOLE NATION AS WELL AS THE STATE OF OKLAHOMA.

AGAIN, I AM PLEASED TO TESTIFY BEFORE YOU TODAY, AND I LOOK FORWARD TO CONTINUING TO WORK TOGETHER WITH YOU TOWARD PROMPT SETTLEMENT OF THIS $40 MILLION AWARD.

STATEMENT OF SENATOR NICKLES ON S. 1526

(A bill to give the State of Oklahoma criminal jurisdiction over the Fort Sill Indian School lands for the purpose of building a detention facility.)

Mr. Chairman, I would like to take this opportunity to express to you my support of S.1526, which would allow the State of Oklahoma criminal jurisdiction over the Fort Sill Indian School lands in Comanche County, Oklahoma. As you know, the passage of this bill will allow the state to operate a prison facility on the Fort Sill site, which is currently jointly owned by the Kiowa, Comanche and Apache tribes of western Oklahoma.

By approving the extension of criminal jurisdiction on these lands to Oklahoma, this bill will allow the tribes and the state to move forward in executing a lease for the property. The detention center will help to fill the critical need for prison space that is faced by the state as well as provide much needed income for the tribes in leasing their facilities.

This legislation is also important in that it represents a spirit of cooperation between the state of Oklahoma and our Indian tribes. Therefore I encourage the committee to favorably report S.1526 to the Senate floor.

STATEMENT OF SENATOR NICKLES ON S.1096

(A BILL TO DIVIDE THE SEMINOLE JUDGMENT FUND)

Mr. Chairman, I want to thank you for calling this hearing and for bringing attention to the stalemate that persists relating to the distribution of the Seminole Judgment Fund award of 1976. As you know, the funds were awarded to the Seminole tribe by the federal government for Florida lands taken by the government during the relocation period that began in 1823. The award of $16 million has been held by the Treasury Department since 1976 and has accumulated substantial interest. It is estimated that the fund will reach the $50 million mark by the end of this year.

I won't go into the lengthy history and details that support my legislation, as you will hear those facts from others testifying here today, but I will just touch briefly on the reasons that justify congressional intervention.

The original tribe that was split by the federal government now consists of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida and the Unaffiliated Seminoles of Florida. My bill proposes a 75% split for the Seminole Nation of Oklahoma and a 25% split for the Seminole, Miccosukee and Unaffiliated Seminoles of Florida.

This division is most fair and appropriate and is the same as that proposed by the Secretary of Interior in 1977. It is based on population figures that were determined by the Department of Interior which identified 2,146 Oklahoma Seminoles to 700 Florida Seminoles.

Mr. Chairman, I introduced S.1096 out of my frustration at the continued stalemate between the tribes in determining a division that can be agreed upon by both parties. Precedence dictates that the best and only fair way to divide the funds is according to historical populations. The Seminole Tribe of Florida disagrees with this formula and demands a fifty-fifty split as an offset to land awards to the Oklahoma group.

Without going into detail as to why a 50-50 split is unacceptable, I will state that it is unconscionable to argue that the Oklahoma group benefited from the Trail of Tears. Not only did hundreds of Seminoles die during the forced march from Florida to Indian Territory, but lands initially given to the tribe as a reservation were later taken from them as Oklahoma became a state. Today the Seminole Nation has a total of only 380 acres of tribally owned land.

The division of the judgment fund at this time is necessary to help the Seminole Nation of Oklahoma out of the economic hard times that they have faced for several years. With their leadership stabilized

over the past four years, the tribe has made great efforts to move forward in providing for their people. However, without the judgment award monies, their efforts are severely stalled and the needs of tribal members continue to go unmet.

In fact, health-related problems are higher among the Oklahoma Seminoles than any of the other five civilized tribes. One of the main reasons for this is because, unlike the other tribes, the Seminoles are unable to help subsidize the health care needs of their citizens.

On the other hand, the Seminole Tribe of Florida is flourishing economically with a reservation land base of approximately 80,000 acres. They are in the driver's seat as far as negotiations are concerned because they have no immediate need for the funds. In fact, it is the stated position of the Florida tribe that they are content to sit on the fund and let it continue to draw interest until the Oklahoma Seminoles agree to their figure. The Oklahoma group believes that 25% is more than fair and are unwilling to negotiate any higher. Without Congressional intervention, I am afraid that this dispute will continue indefinitely.

To conclude, I would state that the Seminoles are one people, split by a callous and regrettable act of the federal government. It is indeed

sad, Mr. Chairman, that today the two tribes are at odds over the issue of money. It is also unfortunate that in a recent edition of the Seminole Tribune that this matter was described as a war. I would hope that the two groups will accept a reasonable split, and will work together in the future to develop a friendlier relationship and explore their culture and history together.

Finally, I would like to thank all those who have worked to help resolve this matter. I would like to especially mention former Oklahoma Seminole Chief Edwin Tanyan, current Chief Jerry Haney, Florida Chairman James Billie, Attorney Paul Neibell, Attorney Jerry Straus, Former Assistant Secretary for Indian Affairs Ross Swimmer, and the Senate Select Committee staff Pete Taylor and Patricia Zell. I look forward to the outcome of this hearing and continue to offer to the committee whatever assistance I can provide. And, again, thank you Mr. Chairman for choosing to address this situation. I know that all of the Seminole people appreciate your efforts.

BOB GRAHAM
FLORIDA

United States Senate

WASHINGTON, DC 20510

STATEMENT OF SENATOR BOB GRAHAM
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 15, 1989

Mr. Chairman, I appreciate your holding this hearing today to consider the judgement dispute between the Florida Seminole Tribe and the Oklahoma Seminoles.

Today you will be hearing from the distinguished Chief of the Seminole Tribe of Florida, James Billie, and Danny Billie, the spokesman for Florida's Traditional Seminole Nation. I commend to you their testimony as very able and respected spokesmen for their Tribes.

Senator Mack and I introduced S. 1336 on behalf of the Seminole Tribe of Florida in response to legislation introduced by Senators Boren and Nickles, S. 1096, on behalf of the Oklahoma Seminoles. Our bill calls for an even division of the judgement claim while S. 1096 would give 75% of the award to the Oklahoma Nation.

Mr. Chairman, I want to commend you for allowing all parties the opportunity to air their views at this hearing. While I believe this issue could best be resolved administratively and strongly encourage such a resolution, I look forward to working with you and the Committee to ensure a fair, equitable settlement in any legislative solution.

STATEMENT OF SENATOR CONNIE MACK
before the
Senate Select Committee on Indian Affairs
on S 1096 and S 1336

Mr. Chairman, unfortunately, due to a conflict in scheduling, I could not be here today to welcome Mr. James Billie, Chief of the Seminole Tribe of Florida and Mr. Danny Billie from the Traditional Seminole Nation as well as other members of the Seminole Indians.

As you know, I am an original co-sponsor, with my distinguished colleague Senator Bob Graham, of legislation dividing the 13 year old settlement agreement between the Federal government and the Seminole Indian Tribe. I appreciate the time and attention that your committee will be spending on this issue and the courtesy you are extending to my constituents.

Although I am a co-sponsor of this legislation, I strongly believe that the division of judgment should be decided by the involved parties. With the recent change in the Oklahoma tribal leadership I support Chief Billie's recommendation of keeping the record of this hearing open for thirty days and directing the parties to report back to the Committee on the progress of negotiations, if any.

The issue of an appropriate division is a complex one going far beyond a simple split based upon population figures. Past consideration that was deducted from the total award as a "payment in claim" needs to be considered as well as disputes over the population figures. The special concerns of the Traditional Seminole Nation as well as the claims of the Ocklewaha band of Seminoles should also be considered in the final outcome of the split.

The money awarded by the Indian Claims Commission in 1976 has been in trust for 13 years now. Although the issues faced by the your committee are difficult, I am confident that this issue can be resolved in the 101st Congress and the money can be equitably disbursed to whom it rightfully belongs.

STATEMENT OF WALT MILLS, ACTING DEPUTY TO THE ASSISTANT SECRETARY -INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 1526, A BILL TO AUTHORIZE THE EXERCISE OF STATE JURISDICTION OVER A PORTION OF INDIAN COUNTRY LOCATED IN COMANCHE COUNTY, OKLAHOMA, FOR CERTAIN PURPOSES.

September 15, 1989

Mr. Chairman I am happy to be here to testify on S. 1526, a bill to authorize the exercise of state jurisdiction over a portion of Indian country located in Comanche County, Oklahoma. The Administration supports S. 1526 if amended to address our concerns.

Although discussions between the tribes and the State of Oklahoma are in their genesis stages, we foresee that this proposed lease arrangement would be very beneficial to the three tribes in their pursuit of economic self-sufficiency.

Section 1 of the bill would permit the State of Oklahoma to lease from the Kiowa, Comanche and Apache Intertribal Land Use Committee the Fort Sill Indian School property and improvements (located in Comanche County, Oklahoma) for the purpose of operating a minimum security correctional facility for the duration of the lease and any renewal or extension of such lease. Civil and criminal jurisdiction would be transferred to the State of Oklahoma during the lease period.

Currently, the representatives of the Kiowa, Comanche and Apache tribes on the Intertribal Land Use Committee do not possess the proper authority to commit the tribes to the exercise of state jurisdiction. The tribal constitution of the Kiowa Tribe places

that authority in the Kiowa Indian Council which is made up of all tribal members over the age of 18. In addition, another referendum would be required by the tribal membership whether to approve the lease for the intended purpose of building a correctional facility. The Comanche tribal constitution requires a referendum on both the issue of jurisdiction and use. The Apache Business Committee has the delegated authority to enter into the lease with the state with Bureau approval. However, it does not have the power to delegate such authority to its representatives on the Intertribal Land Use Committee.

In order to allow the tribes to empower the Intertribal Land Use Committee to enter into the lease agreement, we recommend that the following sentence be added at the end of section 1(b): "Such lease shall require the approval of the Kiowa, Comanche and Apache Indian tribes and the Secretary of the Interior or his designee."

Section 2 provides that civil and criminal jurisdiction by the State of Oklahoma will terminate upon the expiration or cancellation of the lease. S. 1526 does not clearly specify whether this state jurisdiction would be exclusive or concurrent. We recommend that the bill be amended to specify that the State would have exclusive jurisdiction.

Section 3 provides that the bill grants civil and criminal jurisdiction to the State of Oklahoma only over the Fort Sill Indian School site. We have no objection to this provision.

Section 4 directs the Secretary of the Interior to publish in the Federal Register a legal description of such land by no later

than the date that is 60 days after the date of enactment of this Act. We have no objection to this provision.

This concludes my prepared testimony. I will be happy to answer any questions the Committee may have.

P. 3

STATEMENT OF WALTER R. MILLS, ACTING DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (OPERATIONS), DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 1096 AND S. 1336, BILLS TO PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED THE SEMINOLE INDIANS IN DOCKETS 73, 151, AND 73-A OF THE INDIAN CLAIMS COMMISSION.

September 15, 1989

Good morning Mr. Chairman, and members of the committee. It is a pleasure to be here today to discuss S. 1096 and S. 1336, bills which provide for the use and distribution of funds awarded the Seminole Indians of Florida and the Seminole Nation of Oklahoma.

We believe the the better solution would be for the tribes to get together to solve the dividion of funds among themselves. However, in the absence of that occurrence we would recommend enactment of S. 1096. We do have some concerns with portions of the bill and have suggested amendments with clarifying language as provided in our attachment.

We do not support S. 1336. We do not agree with the division of funds as presented in this bill and find relinquishment of tribal membership for a per capita payment in Section 9(e) unacceptable.

The equitable solution of this judgment award has been a long standing issue between the Seminole entities of Florida and the Seminole Nation of Oklahoma. The tribal beneficiaries of this award have not been able to come to an agreement as to the division of the funds. Our position remains unchanged. We believe the most equitable solution is to base the distribution on the historical population count of each entity as determined by the Reconstructed Florida Seminole Census of 1914 and tne Oklahoma Seminoles by blood in 1906, as corrected in 1914.

The Results of Research Report completed in 1977 determined that the Reconstructed Florida Seminole Census of 1914 (certified May 20, 1977) established the count of Seminole Indians living in Florida in 1914 was 700 and that the roll of Oklahoma Seminoles by blood in 1906, as corrected in 1914, numbered 2,146. Adding both figures makes a total of 2,846. The calculation of per centum based on these historical population figures determines that the Oklahoma share of the judgment funds is therefore 75.404 percent, and that of all Florida Seminoles is 24.596 percent. This division is provided for in S. 1096. The judgment funds under discussion today were appropriated more than 13 years ago and considerable amounts of time and cost have been spent by all parties involved, including the BIA.

Background:

The Seminole Indians of the State of Florida filed Docket 73 on August 14, 1950, and the Seminole Nation of Oklahoma filed Docket 151 on July 23, 1951. The Indian Claims Commission approved a compromise settlement and entered a final consolidated award for both dockets in the amount of $16 million on behalf "of the Seminole Nation as it existed in Florida on September 18, 1823." Funds were appropriated for the award in June 1976. The principal, with interest and investment income accrued to about $47,112,000 as of May 1989.

On April 20, 1977, the Indian Claims Commission entered a final award in Docket 73-A for $50,000 on behalf of the Florida Seminole entities only. Funds for this award were appropriated in March 1978. This principal, with interest and investment income has now accrued to about $135,000.

The Bureau's Results of Research Report, prepared under the Indian Tribal Judgment Funds Use or Distribution Act of 1973, (87 Stat. 466) identified the beneficiaries of the awards in Dockets 73 and 151 as: (1) Seminole blood members of the Seminole Nation of Oklahoma; (2) the Seminole Tribe of

Florida; (3) the Miccosukee Tribe of Indians of Florida; and (4) the unenrolled Seminole or Miccosukee Seminole Indians of Florida, referred to in the bills as the unaffiliated or independent Seminole Indians of Florida. The report also determined that the Freedmen of Oklahoma were ineligible to share in the awards because their ancestors became members of the Seminole Nation in 1866, 43 years after the date of land taking in 1823.

The Assistant Secretary - Indian Affairs submitted a Secretarial Plan to the Congress on April 4, 1978, providing for the division, use, and distribution of the funds in Dockets 73 and 151. However, failure to meet the 180 day deadline from the date of appropriations imposed by the Indian Tribal Judgment Funds Use or Distribution Act of 1973, (87 Stat. 466) resulted in the plan being declared null and void in unreported decisions of the U.S. Federal Court in Washington, D.C.

The Seminole Tribe of Florida has rejected the Secretary's formula for the division of these funds. The Florida Seminole contend the use of the historic population count is unfair, and suggest that financial and real property benefits previously granted the Oklahoma Seminoles should be discounted against the Seminole Nation of Oklahoma's share of the funds. The Seminoles of Florida favor a 50/50 percent division of the appropriated funds in Dockets 73 and 151. This division of funds is proposed in S. 1336.

Additionally, S. 1336 provides for the distribution of the funds provided for the Seminoles of Florida in Docket 73-A. The bill provides that the division of these funds be allocated by the following percentages: 77.20 percent to the Seminole Tribe of Florida; 18.16 percent to the Miccosukee Tribe of Indians of Florida; and 4.64 percent to the independent Seminole Indians as a group.

According to BIA's Seminole Agency and Eastern Area Office, there were 1,768 members of the Seminole Indian Tribe of Florida as of July 10, 1989, and approximately 500 members of the Miccosukee Tribe as of May 1988. The Branch of Acknowledgment and Research was informed that there are approximately 200 of unaffiliated Seminoles with the group that has petitioned for recognition but there may be countless other descendants. Based on these figures the total would be 2,468. This would amount to 71.6 percent for the Seminole Nation of Florida; 20.3 percent for the Miccosukee Tribe of Florida; and 8.1 percent for the unaffiliated or independent Seminoles of Florida.

S. 1336 conforms to the wishes of the Miccosukee Tribe and the Seminole Tribe of Florida that their share of the allocated funds would not require a plan for the use or distribution of the funds. Under the provisions of the bill, the Seminole Tribe of Florida would invest their share as determined by the tribal governing body to be in the best economic and social interests of the tribe. The Miccosukee Tribe will have no plan nor any of their share of the funds disbursed unless such plans or disbursements are duly authorized by the General Council. These funds are to be held in trust by the United States and the governing body of the tribe shall be paid part of the amount from time to time.

The other concern with S. 1336 is Section 9(e). Miccosukee or Seminole tribal members who are eligible for per capita payments shall have the option to relinquish their membership in favor of the per capita membership or retain their membership by authorizing their per capita share to be paid to the account of the respective tribe. Relinquishing membership in a tribe is a serious action and we fail to see the rationale for such a requirement.

The BIA has expended much time and effort to ensure that the sharing of the funds be equitably based on a historical population count. This has involved intense research and review of the history of the Seminole Nation in order to

reconstruct the Florida Seminole Census of 1914 and the Seminoles of Oklahoma by blood count of 1906, as corrected in 1914. The findings and recommendations of the Results of Research Report were disseminated to all Seminole entities of Florida and to the Seminole Nation of Oklahoma. We base our division of the shares of the judgment awards as presented in S. 1096 on that report and believe it to be the most equitable and fair division of these judgment funds.

This concludes my prepared statement. I will be happy to answer any questions you may have.

ATTACHMENT TO TESTIMONY ON S. 1096 AND S. 1336

Section-by-section analysis of S. 1096 and suggested amendments

Section 1 states that irrespective of any other laws or regulations promulgated, the judgments awarded will be used and distributed as provided in this Act.

Section 2 provides for the use and distribution of the award in Dockets 73 and 151 to be allocated by the Secretary in prescribed allocations of 75.404 per centum of such funds to the Seminole Nation or Oklahoma and 24.596 per centum of such funds divided among the Seminole entities of Florida. All of the funds awarded in Docket 73-A will be divided among the Seminole entities only.

We recommend specific language be considered for limiting legal expenses for what appears to be the same issue by deleting the parenthesis comma after expenses and adding "previously paid)," to both subsections (a) and (b). We also recommend that this section be amended to provide the language stating that the percentages as presented are based on "historical population count" for both subsections (a) and (b) by inserting after the word "are" the words to read as follows: "based upon a historical population count and allocated hereby as follows--".

Section 3 directs that a proposed plan for the use and distribution of funds be prepared by the governing body of the Seminole Nation of Oklahoma within 180 days of enactment of this Act. The Secretary will then submit the plan to Congress with justifications for its approval. If the tribe does not prepare

the plan within the prescribed time, the Secretary, in consultation with the tribe, shall prepare a plan within 180 days of the expiration of the first 180 days. The Secretary shall then submit the plan to the tribe and to Congress for approval, at the same time. This section further provides that the funds allocated to the Seminole Nation of Oklahoma may not be used or distributed until a membership roll is certified by the Secretary.

There is no need for a certified roll for the Seminole Nation of Oklahoma unless there is a per capita or dividend distribution provision in the plan to be approved by Congress.

We recommend tnat the plan for use and distribution of the funds be called a "Secretarial Plan" to ensure that the Secretary has final authority to make necessary modifications in the proposed plan. Such language enforces the intent of Congress, as we interpret it, in Section 3(b). We also recommend that the word "approved" be used throughout the Act in lieu of "certified". Normally the tribe "certifies" their membership roll which is then presented to the Secretary for "approval".

Section 4 provides for the division of funds allocated among the Florida entities on the basis of the respective members in each entity who are living on the date of enactment of this Act, unless some other basis is agreed upon in consultation with the Secretary within the 180 days following enactment. Each tribe and the unaffiliated Seminoles will prepare a plan for the use and distribution of funds in consultation with the Secretary. None of the funds will be disbursed until each entity has a

membership roll of members born on or before and living on the date of enactment of this Act and certified by the Secretary.

We recommend that Section 4(a) be deleted since this language would make it difficult to implement since two of the three entities involved have previously indicated opposition to acceptance of a money settlement, in addition; the language in this section will make it difficult if not impossible to determine who is eligible for the award. We recommend this section be rewritten using language specifying that the share of each entity be based on a historical population count and that the language in Section 3(c) and Section 4(d) which refers to the membership rolls, using the language "born on or before and living on the date of enactment of this Act" be used as this is preventive language required to clarify who is eligible for the award.

We recommend that a time frame for submission of a proposed plan by the Seminole tribes of Florida be given the same time frame as the Seminole Nation of Oklahoma. It follows that the Act should specify the same procedures for all entities involved.

The unaffiliated Seminoles of Florida are not a Federally recognized tribal entity with a governing body, therefore, there will be no need for a proposed plan for the programming and distribution of the funds. For this reason, language specifying that the unaffiliated Seminoles of Florida will receive per capita payments is the only means of distributing their share of the judgment allocations.

Section 5 provides that the Secretary encourage programming of funds for economic development for the tribe. Any investments, use or distribution of the funds are to be used for common tribal needs, educational requirements, and long-term economic and social interests of the affected tribe. Minors and incompetents who are entitled to receive any portion of allocated funds and have funds awarded them will have their interests protected and preserved. Such funds may be disbursed to parents or guardians in such amounts as necessary for the well-being of the minor or incompetent. Plans for these individuals must be approved by the Secretary and the governing body of the Indian tribe involved.

Section 5 further provides that approved plans are to be implemented 60 days from the day the plans are submitted to Congress, excluding days the Congress is not in session because of an adjournment of more than three calendar days to a day certain, unless a joint resolution is enacted disapproving the plan within this 60 day period. Tribal investments under a plan will be approved by the Secretary and if disapproved, the Secretary will notify the tribe, within a reasonable time, that the investment is not sound or not in accord with this Act.

The Indian Tribal Judgment Funds Use or Distribution Act, (25 U.S.C. 1401 et seq., 87 Stat. 466) section 3(b)(5) specifies that "a significant portion of such funds shall be set aside and programed to serve common tribal needs, educational requirements, and such other purposes as the circumstances of the affected Indian tribe may justify, except not less than 20 per centum of such funds shall be so set aside and programed." We strongly recommend that this section be redrafted to specify that no less than 20 percent of the judgment shares for each tribe be set

aside for programming purposes under this legislation in the plans approved by the Secretary and submitted to the Congress.

Section 6 provides that funds allocated pursuant to this Act are to be held in trust by the United States for the tribes and the unaffiliated Seminole Indians of Florida (including interest and investment income accrued while funds are held in trust) and that the funds made available under this Act are subject to the general provision in 25 U.S.C. 1407 relating to tax and income treatment of such funds. We have no objection to Section 6.

Statement of Principal Chief Jerry Haney

Hearing on S. 1096 and S. 1336, September 15, 1989
Before the Senate Select Committee on Indian Affairs

Mr. Chairman, it is a pleasure and privilege for me to be here this day and address the Select Committee on the merits of S.1096 and S. 1336. My name is Jerry Haney, and I am the Principal Chief of the Seminole Nation of Oklahoma.

As you might be aware, the Seminole Nation recently had its election, and I was sworn into office just one week ago. (The former Principal Chief, Mr. Edwin Tanyan, has joined me on this trip, and I wish to introduce him at this time.) It is important that you understand the Seminole Nation of Oklahoma speaks with one voice on the subject of our judgment funds. Our tribe has experienced a hard fought political battle for leadership and has made the transition to new leadership in a way that should be a model for other tribes. I believe the Seminole Nation is strong today and will continue to grow stronger every day.

In 1976, the Court of Claims awarded the Seminole people a judgment for $16 million as a result of unfair dealing with Seminole in 1823. The judgment was awarded on behalf of the Seminole Nation as it existed in Florida on September 18, 1823. This judgment fund has been drawing interest since 1976, yet the Seminole people have been unable to benefit from a single penny.

After the judgment was awarded to the Seminoles, it became necessary for the fund to be divided according to the Court of Claims judgment. Obviously, the beneficiaries of the fund had to be determined. Since the removal of the Seminoles to India Territory during the mid-to late-1800's, most of the Seminole descendants now live in Oklahoma. In

fact, by 1859, after 15 years of encouraging and forcing Seminoles to remove to the west, it is believed that only 60 Seminoles remained in Florida. The November 26, 1859 report of the Commissioner of Indian Affairs, states at page 18:

> The removal of the remaining Seminoles from Florida, with the exception of the aged Chief, Sam Jones, and a very small number of his personal adherents, was successfully accomplished last spring, by Superintendent Rector, who was charged with the execution of this onerous and difficult duty.

In spite of many such records indicating nearly all Seminoles had left Florida, the Bureau of Indian Affairs was required to make a study of the population in order to provide the Secretary of Interior with information on which to base a division of the judgment fund between the Oklahoma and Florida Seminoles. For these purposes, the Bureau used the 1906 enrollment data of the Oklahoma Seminoles upon which land allotments were based. For the Florida Seminoles it used the 1914 Florida Seminole Census. In order to be absolutely certain that the Florida group was not undercounted, the Bureau contracted with the Florida tribe to help research the population data, and as a result, arrived at the number 700 (24.596%) for Florida and 2,146 (75.404%) for Oklahoma. Further research was believed necessary to subdivide the Florida share, but since S.1336 provides for that subdivision, I assume that the three Florida groups have now reached an agreement on that matter. Of course, even if that agreement has not been made, it would not be a reason for Congress to delay in approving the division between Oklahoma and Florida.

The Oklahoma Seminoles desperately need their share of the award and have diligently sought to make use of it. A little more than a month after the completion of the BIA's results of research reports in 1977,

the BIA held a hearing of record on our proposed use and distribution plan. While not submitting a plan of their own, the Florida Seminoles filed suit to which we were never a party and for ten years have succeeded in blocking progress on our plan. We did not start this conflict with the Seminoles in Florida, nor do we want to see it continue. But we do want justice and equity.

It is important to understand for the purpose of an Oklahoma-Florida division of the award that 91% of the Oklahoma population is one-half blood or greater; and only 2% (33) are less than one-quarter blood, according to the BIA's results of research report of November 26, 1976 (page 9). Certainly, it is time to accept these facts on blood quantum. The Seminole Tribe of Florida's statements to this committee on March 2, 1978, that the Oklahoma Seminole share of the award is as great as it is because there is no minimum blood quantum for enrollment in the Seminole Nation of Oklahoma, are incorrect. Our enrollment standards were not used for dividing the award, the 1906 Dawes Act roll was. Thus, instead of using today's population base of 9,000 for dividing the award, the BIA has used the 1906 record of 2,146 for the Seminole Nation of Oklahoma.

It is also important to understand the contrast between the Seminole Indians in Florida and the Seminole Nation of Oklahoma today about land ownership and its essential importance to tribal progress. Let me tell you what the BIA's Annual Report of Indian Lands of September 30, 1985, at pages 12 and 18, has to say about the Seminoles in Florida and Oklahoma. The Seminole Nation of Oklahoma owns 380.10 acres of tribal trust land. Tribal members retain 27,948 acres of allotted land of the 365,854.39 acres of tribal land that made up our reservation at the turn of the century. As you know, most of our land was lost immediately

following allotment by massive non-Indian fraud. Today, the Seminole Indians of Florida own more than 400 times as much tribal trust land, 153,839.84 acres, as the Seminole Nation of Oklahoma. As Howard Tommie, former chairman of the Seminole Tribe of Florida testified before this committee on March 2, 1978, with its land, the

> "Tribe operates a large cattle program, of about 10,000 head, which provides employment, and businesses for individual members and returns a respectable profit to the Tribe. We also operate a tourist attraction complex including an Indian village and arts and crafts, a catfish farm and program and other projects."

Of course, we are all aware of the now famous Florida Seminole Bingo Halls and, with the acquisition of the Tampa reservation, the Seminole Tribe has been able to add a luxury hotel to its asset base. We applaud their success in Florida, and we seek the same kind of economic growth for ourselves. But none of these comparisons should be used to change the basis for dividing the judgment fund.

Pursuant to the results of research reports, the Secretary divided the fund according to the percentages shown above. This division was an administrative decision of the Secretary and was later ruled on in a lawsuit brought by the Seminole Indian Tribe of Florida against the Secretary of the Interior in the United States District Court for the District of Columbia, No. 78-994, July 9, 1979. In that action, the Florida Seminoles challenged the division of funds between the two groups as well as the distribution plan of the Oklahoma Seminoles, as having violated the "Distribution of Judgment Funds Act" 25 U.S.C. §1403(a)(2), 1402(a). The court held

> "in light of the plain language of the Statute, see U.S.C. §1403(b)(1)-(5), the court must conclude that Congress intended the procedural protections of

> Section 3(c)(2) to attach in the case of multiple tribes or groups only after the Secretary has determined on a division of funds among them and after the entities have submitted plans for the application of their fund share. (Emphasis added.)

The issue of secretarial division was appealed by the Seminole Tribe of Florida. Although the appeal was denied, the United States and the Seminole Tribe of Florida agreed to the entry of a stipulated judgment that linked the Secretary's authority to divide the judgment with timely submission of a use and distribution plan. Since the Secretary had missed the deadline for the plan, the authority to divide the fund lapsed. As a result, we have no remedy to reinstate the Secretary's decision except Congress.

In addition to the division between Oklahoma and Florida, S.1096 addresses the question of the two groups developing their respective plans. We believe the language we propose in our Bill, S.1096, will allow the Seminole Nation of Oklahoma to proceed with the development of a plan for the use of our share of the judgment fund and that, finally, after 157 years, the descendants of those Seminoles forced out of their native homeland will get some relief from the injustices they suffered.

In closing, I understand that the Florida Seminole groups have introduced their own Bill in the hopes that the Congress will take away part of the Oklahoma share of the judgment fund and give it to the Florida group. This I do not understand. The few Seminoles who remained in Florida and rebuilt the Seminole Tribe of Florida into a mighty economic and political entity are to be commended. Unfortunately, the ravages of the removal of my tribesmen to the west, often in shackles and chains, has left deep scars on the descendants of those early travelers.

Over one-fourth of my tribe died while the United States government pushed them out of their native land. There can be no logic to the claim of our brother Seminoles in Florida to our share of the judgment fund. If the Congress desires to compensate the Florida Seminoles beyond what the Court of Claims provided, it must do so through new appropriations because it cannot take away from Oklahoma Seminoles that which the Courts have awarded them.

The Court of Claims in its judgment and the Congress by appropriation have attempted to repay the Seminoles of 1823, that to which our ancestors were entitled. Now their descendants are to share in that judgment. Let that share be fair and equitable. Please do not take away from the Oklahoma Seminoles that which the Secretary of Interior and the Court of Claims have said is our share. And please pass this legislation as soon as possible so that we may begin the work of developing our plan and these funds may begin benefitting our people who so desperately need help.

Thank you for listening to me. If you have questions, I will be pleased to answer them.

Submitted by

Principal Chief Jerry Haney
Seminole Nation of Oklahoma

STATEMENT OF DWAYNE MILLER

Mr. Chairman and members of the Committee:

It is an honor to be here today to speak on behalf of my tribe.

My name is Dwayne Miller.

I am a full blood Seminole Indian and I am the band chief of the Thomas Palmer band of the Seminole Nation. I have also served as Training and Employment Director for the Seminole Nation and have been a member of the Seminole Judgment Fund Committee since the late 1970's.

It has been many years since my people were forcibly removed from their indigenous homelands of Florida. History tells us that the removal of the Seminoles was one of the costliest of all the Indian wars with America. More than one-third died on the Trail of Tears.

Our tribal history, passed down through generations, reminds us present day Seminoles, that the Seminole war in the last century was a very bloody and desperate period, when our Seminole Nation fought for its very existence.

Today gentlemen, the Seminole Nation in this century is again literally fighting for its existence as a Tribal entity due to severe socio-economic conditions.

The Seminole Nation of Oklahoma presently suffers from an estimated 63% unemployment rate, from which these effects promote human misery in terms of alcoholism and drug abuse among tribal members, a high percentage of our Tribal school children lead the state in learning disabilities and in the drop out rate for Oklahoma.

Limited Federal funds for housing, education, health care and other social needs, simply are not sufficient to meet the growing needs of our people.

I am here today, with Chief Haney representing the tribal membership of the Seminole Nation, in their unrelenting quest to receive the benefits that our proud ancestors paid so dearly for in lives and land.

The Seminole Nation has been waiting since 1823. Many of our elderly have passed on, they who hoped to be a part of this award, the young people have been taught of the stories of the great Seminole removal and have become cynical and bitter in regard to the Florida Judgment Fund and the stalemate that prevents these tribal youth from seeking a better way of life through education and employment. Without the Florida judgment award monies, the future of our Tribe continues to look bleak and hopeless. The irony is that we do have funds, but we can't touch it.

We sincerely believe that the division of the fund between Oklahoma and Florida by the Secretary of the Interior in 1977 and set forth in S. 1096 is more than fair and equitable to the Florida Seminoles. Yet many years have been used up in various attempts by the Florida Seminoles to claim an even larger share of the fund. All we have been able to do for the Oklahoma Seminoles is resist those attempts which have concluded in stalemates. It is time that we call upon the trust responsibility of the U.S. Congress to once and for all, resolve this situation by confirming the Secretary's well founded division of the fund. The Seminole Nation of Oklahoma desperately needs its share of the funds to promote education, employment and above all self-sufficiency.

It would appear to be a simple matter, to divide the Florida award between the two Seminole entities, since we are historically the same people. Sadly, this is not the case. The Oklahoma Seminoles and Florida Tribes have tried unsuccessfully for 13 years to negotiate an agreement on the division of funds.

There is no animosity from the Oklahom Seminoles toward our relatives in Florida over the inability to divide the funds. We believe that the Congress must use its delegated trust responsibility to authorize the Secretary to act in this situation.

In fact we are not asking Congress to make the decision about the division. That decision has been made by the Secretary. We simply are asking the Congress to confirm the action taken by the Secretary after careful study pursuant to congressional direction.

In 1979 the Secretary's division was challenged in Federal court. The court confirmed that the Secretary had been given the authority by Congress to make that division and that the Secretary had divided it properly. Due to a technicality that had nothing to do with the results of research used by the Secretary to divide the money, the Secretary's decision has been put on hold.

Congress should not be asking us to negotiate any more. Negotiations make sense when neither side is certain of its entitlement, or there are no clear cut rules for deciding on a division. But that is not the case here. The rules are known, the courts established them and Congress directed the Secretary to use those rules. The Secretary did so and made as precise a division as anyone could expect. The only reason we are here today is because Congress put a deadline on the Secretary that he could not meet and still do the detailed job required of him. Congress's

job is to correct the deadline problem by passing legislation to confirm the decision it delegated to the Secretary. That legislation is S. 1096.

We believe that the spirit of our great Seminole Chiefs: Osceola, Billy Bowlegs, Coucochee, Halata Micco continue to cry out for justice for their people.

The proud descendents of those Seminole warriors who fought so courageously for their Florida domain and were forced to walk the infamous Trail of Tears come now before this distinguished panel and sincerely ask for overdue justice and pray that Congress will do that which is honorable and right and that, gentlemen, is the passage of S. 1096. Thank you.

Statement of Paul M. Niebell, Attorney for the Seminole Nation of Oklahoma In re: Proper and fair division of the Final Judgment Fund from the Florida Land Claim between the two claimants: The Seminole Nation of Oklahoma, and the Seminole Indians of the State of Florida, Dockets 73 and 151, before the Indian Claims Commission.

The final judgment in the Seminole Florida land claim was based upon the unconscionable consideration paid by the United States for lands in Florida exclusively owned and ceded by the Seminole Nation as it existed in Florida at the time of the execution of the Treaty between the United States and the Seminole Nation of September 18, 1823, 7 Stat. 224, 2 Kapp. 203.

Two separate claims for the same Florida lands were filed in 1950 and 1951 before the Indian Claims Commission: Docket No. 73 for the Seminole Indians of the State of Florida, and Docket No. 151 for the Seminole Nation of Oklahoma. The suits were consolidated for trial by the Indian Claims Commission, and were tried as one case. On April 27, 1976, after a long period of litigation, from 1950 to 1976, this case was settled by agreement of the parties for the net sum of $16,000,000.00 to plaintiffs (38 Ind. Cl. Comm. 62 (1976).

As the Commission found on May 8, 1964 (13 Ind. Cl. Comm. 326, 327):

"2. * * *
"The plaintiffs herein, The Seminole Nation of Oklahoma and The Seminole Indians of Florida, together comprise The Seminole Nation as it existed in Florida until 1832".

And at page 368:

"Finally this Commission concludes that the instant plaintiffs, The Seminole Nation of Oklahoma and The Seminole Indians of Florida, together comprise The Seminole Nation as it existed in Florida until 1823."

The Seminole Nation was one entity in 1823 and 1832, and both Seminole groups were an integral part of the one entity, and the cession of the Florida lands under the Treaties of 1823 and 1832 was made by the one entity, The Seminole Nation as it existed in 1823 and 1832.

It was not until the so-called Seminole War, which began in 1835, and continued until 1842, that the Seminole Nation was split into two entities: Those Seminoles who were captured by the United States Army, and moved by the military forces of the United States to what was then Indian Territory, west of the Mississippi River; and those few Seminoles who hid in the Everglades and remained in Florida, where the United States Army was unable to find them.

The Courts have held that the judgment in unconscionable consideration cases represented an additional payment for the lands which the Seminole Nation ceded to the United States in the 1823 and 1832 treaties, and belonged to the descendents of those Seminoles who were members of the Seminole Nation as it existed in 1823 and 1832.

The Court of Claims held in the case of C. W. McGhee, et al. v. The Creek Nation and the United States, 122 Ct. Cl. 380, 396 (1952), cert. den. Oct. 20, 1952, 344 U. S. 850:

"* * * we hold that in the event of an award for such an injury, it should be for the benefit of all descendants of the Creek Nation as it was constituted in 1814, and recognized by the United States in the treaty of cession of that year, the method of determining the identity of such descendants to be provided for by Congress in making an appropriation to pay the award."

In a similar situation, the Indian Claims Commission in the case of The Blackfeet and Gros Ventre Tribes and The Assiniboine Tribe and Sioux Tribe of the Fort Peck Reservation, Intervenors v. The United States, 18 Ind. Cl. Comm. 241 (1967), at page 321, held:

"Intervenors contend that their interest consists of an undivided one-fourth share each. They base this contention on the law of property which is perfectly valid in the case of individuals who take an interest under an instrument which does not specify the particular share of each. In such a case the interest is presumed to be in common and therefore equal."

"To apply such a rule to Indian lands would lead to an unjust result in most cases. Indian rights in land are tribal in nature and not individual. If we tried to equate tribal rights with individual rights and thereby create an equal interest in an area among the tribes using and occupying it, we would be ignoring the basic fact of Indian use and occupancy. We would be creating a common law concept of title in an area where such concept had never grown by custom or usage. The smallest tribe would be entitled to as much as the largest one. To do this would be contrary to reason since a subsistence use of land necessarily implies a use in proportion to numbers. Where there is no evidence of intention to the contrary and no language stating what interest shall be taken, we think the proper and just manner of dividing tribal interests in a given area is by population as of the date of cession, or an average population near that date, whichever is more reasonable under the particular circumstances."

The Red Lake, Pembina and White Earth Bands, et al., Appellants v. The United States, Appellee, 164 Ct. Cls. 389 (1964), was a case involving the unconscionable consideration paid by the United States for the lands the tribe ceded to the United States in the Treaty of October 2, 1863, as modified by the Treaty of April 12, 1864.

As in the case of the Seminole Nation, the Court held that the consideration the United States paid for the lands ceded in the above treaties was wholly unconscionable, and judgment was entered for the difference between the amount paid and the fair market value of the land at the time of the execution of the treaties.

Two bands of the Chippewa tribe were parties to the treaties involved. In determining the division of the judgment money between the two bands the Court of Claims, at page 399, held on the issue of the distribution of the judgment money:

"4. The last problem we face is the issue of distribution. It has now been established, and is conceded by appellee, that the award must go to the tribal entities rather than descendants of the bands. Minnesota Chippewa Tribe v. United States, 161 Ct. Cl. 258, 315 F. 2d 906 (1963); and Spokane Tribe et al. v. United States, 163 Ct. Cl. 58 (1963). But the issue whether a division of the award between the Penbina and Red Lake Bands should be made remains before us. The 1863 Treaty (by Supplementary Articles, proclaimed April 25, 1864, 13 Stat. 689) did set forth consideration that was divided between the bands as follows—two-thirds for the Red Lake Band and one-third for the Pembina. This division was in accord with the respective populations of the bands at that time. To say that Congress intended the consideration be divided equally between the bands is to ignore the clear import of the only language in the Treaty dealing with the subject. Since the consideration for the cession of territory was to be so divided between the two bands, the award now given to remedy the insufficiency of the original consideration must likewise be divided. And the allowed offsets attributable specifically to one band or the other should be deducted from the band's share of the award. Allowed offsets that relate to expenditures made for the benefit of both bands should be deducted before the division is made."

Thus the Court held that as the award represented additional consideration for the lands ceded in the treaty, the division between the two bands of the tribe should be made in accordance with the population of the two bands at the date of the treaty; and as the treaty terms specified that the population of the one band at that time was one-third, and the population of the other band was two-thirds, the terms of the treaty should be followed, and the judgment should be accordingly divided between the two bands of the tribe.

The award in the Seminole Florida claim represented the additional consideration for the lands in Florida that the Seminole Nation had ceded to the United States in the Seminole Treaties of September 18, 1823, 7 Stat. 224, and May 9, 1832, 7 Stat. 368.

The historical data relative to the population of both Seminole groups nearest to the dates of the 1823 and 1832 Seminole treaties is set forth below.

The November 25, 1844 Report of the Commissioner of Indian Affairs states that there were 3,824 Florida Indians, and that 3,136 by actual count were then in the West. The 3,136 Seminoles in the West did not include the negro slaves that were with them.

The November 24, 1845 Report of the Commissioner of Indian Affairs states that of the 3,824 Seminoles, 3,136 were west of the Mississippi River in Indian Territory at that time; and a footnote states that "about 100 are supposed to be east".

In Sprague's "Florida War" (1848), W. J. Worth, Brig. Gen'l, commanding Headquarters 9th Mil. Dept., U.S.A., at St. Augustine, Florida, reported (p. 507) that there were 95 warriors remaining in Florida on November 17, 1843, consisting of 42 Seminoles, 33 Mickasukies, 10 Creeks, 10 Tallahassees, and with women and Children the total number of Indians was 300.

And at page 512, J. T. Sprague, Capt., U.S.A., in charge of Indian Affairs in Florida, reported in 1845:

> "Very recent intercourse with the Indians remaining within the limits of the state, has enabled those upon whom the duty devolved, to ascertain correctly the number, and the disposition manifested in regard to peace and future emigration, as well as their present condition. There are now one hundred and twenty men capable of taking the field, consisting of fractions of various bands, viz.: Seminoles 70; Mickasukies 30; Creeks 12; Uchees 4; Choctaws 4. Of this number seventy have grown from boyhood to manhood since the commencement of the contest. The remainder do not exceed forty years of age, excepting Arpeika (Sam Jones), and Assinwar. The former is ninety-two years of age, the latter sixty. The women and children average two to a man, making two hundred and forty; of this number one hundred and fifty are children. The total number of Indians of both sexes, is three hundred and sixty. * *"

The 12 Creeks, 4 Uchees, and 4 Choctaws are not Seminoles.

Under the tripartite treaty of August 7, 1856, 11 Stat. 699, 2 Kapp. 756, the Seminole Nation acquired a separate domain from the Creek Nation in Indian Territory. In accordance with Article 10 of this treaty, the Western Seminoles supplied two separate delegations to travel to Florida to assist the United States in its efforts to secure the removal of the remaining Seminoles to the West. In 1857-1858, Elias Rector, Superintendent of Indian Affairs for the Southern Superintendency, S. M. Rutherford, the Western Seminole Indian Agent, and W. H. Garrett, Creek Indian Agent, and 40 Western Seminoles and 6 Creeks, traveled to Florida, and succeeded in inducing 165 Florida Seminoles to remove west. Also in December, 1858, Elias Rector, with 8 Western Seminoles, traveled to Florida, and in March, 1859, succeeded in inducing 75 additional Florida Seminoles to migrate west. (Foreman's "Indian Removal", p. 385; McReynolds', "The Seminoles", pp. 286-287; Foreman's "The Five Civilized Tribes", p. 271-275.

So the 300 Seminoles left in Florida in 1845 were thus reduced by a total of 240 Seminoles who moved to the West in 1858 and 1859, leaving 60 Seminoles remaining in Florida in 1859. The November 26, 1859 Report of the Commissioner of Indian Affairs, states, at page 18:

> "The removal of the remaining Seminoles from Florida, with the exception of the aged Chief, Sam Jones, and a very small number of his personal adherents, was successfully accomplished last spring, by Superintendent Rector, who was charged with the execution of this onerous and difficult duty. * *"

Like the Western Creek emigrants, the Western Seminole emigrants' numbers were greatly reduced during the period following their settlement in Indian Territory. Of the total of 3376 Seminoles the United States removed to the West, the United States Indian Agent for the Seminoles, reported on August 29, 1859 their total population to be 2,253, a loss of about one-third of their number. The loss resulted from a change in climatic conditions, and diseases. In the report of U. S. Seminole Agent, dated August 18, 1858, Samuel M. Rutherford, stated (1858 Rept. Comr. Ind. Affs., p. 153):

> * * * The emigrants continue to suffer considerable from sickness; several of them have died since they reached this neighborhood; nor is the sickness confined to the emigrants alone, for the old settlers appear to suffer almost to as great an extent. The disease with which they are afflicted has assumed the typhoid character, and in many cases terminates fatally."

Therefore, the 60 Seminoles remaining in Florida in 1859 would constitute 1.75%, and the 3,376 Seminoles removed to Indian Territory would constitute 98.25% of the total Seminole population.

Considering the above facts, the division suggested by the United States Department of the Interior of 24.596% for the Florida Seminoles, and 75.404% for the Oklahoma Seminoles, based upon a 1914 enrollment, in my opinion, is extremely generous to the Florida group.

Certain statements made in the letter of James E. Billie, Chairman, Seminole Tribe of Florida, dated April 25, 1988, to Senator Daniel K. Inouye, Chairman, Senate Select Committee on Indian Affairs, indicates that he is not aware of the relevant facts, and should be corrected.

The letter states that because of the benefits received by the Seminole Nation of Oklahoma the judgment for the Florida lands was significantly reduced. This statement is incorrect. No payments to the Seminole Nation of Oklahoma were involved in the settlement of the Florida land claim, for in the final settlement the United States waived all of its offset claims against the Seminole parties, and the $16,000,000.00 judgment was a net payment for the cessions of the Florida lands. In Seminole Indians of the State of Florida and The Seminole Nation of Oklahoma v. The United States, 38 Ind. Cl. Com. 62 (1976), Docket Nos. 73 and 151 (Consolidated), at page 79, is the "Stipulation for Entry of Final Judgment", signed by counsel for all parties, and it is stated therein:

> "that no offset claims are to be asserted against said judgment so entered, and the United States hereby waives any and all claims for offsets which have been asserted or could have been asserted against the plaintiffs in this case under the provisions of Section 2 of the Indian Claims Commission Act. * * *"

So the $16,000,000.00 settlement figure represented the value of the 27,933,276 acres ceded by the Seminole Nation as it existed in 1823 and 1832, when the Treaties of Fort Moultrie of September 18, 1823, 2 Kapp. 203, 7 Stat. 224, and Payne's Landing of May 9, 1832, 2 Kapp 344, 7 Stat. 368, were executed.

It is thus evident that the final judgment in this case was in no way reduced by later payments to the Seminole Nation of Oklahoma, and these benefits had no relation to the amount of the final settlement agreed upon by the parties in the above entitled case.

The Seminole Nation of Oklahoma experienced much loss of life, and many hardships from lack of adequate clothing and provisions, in the forced removal from their ancestral homes in Florida to lands in Indian Territory by the Military Forces of the United States. The Florida Seminoles did not suffer these hardships, and remained on their native lands in Florida, with the advantages of its warm climate, and were able to pursue their usual way of life in hunting and fishing as they always had done.

It was no fault of the Seminole Nation of Oklahoma that the United States neglected to provide for the Florida Seminoles until the 1930's. The Florida Seminoles' claim for this neglect is against the United States, and not against the Seminole Nation of Oklahoma. Had the Florida Seminoles elected to remove West, they would have received the same benefits, and suffered the same burdens, as the Seminoles who removed West. The members of the Seminole Nation in the West had to adjust themselves to an entirely new and different way of life in a harsh climate, and to defend themselves and their new homes against the wild Indians of the Prairies. The Florida Seminoles experienced none of these hardships.

It was no fault of the Seminoles of Oklahoma that the Florida Seminoles elected to stay on their native lands in Florida. It was of their own free choice. Many efforts of the United States and the Oklahoma Seminoles were made to secure the removal of the Florida Seminoles to the lands west, and to persuade them to join their families and relatives there. We review some of these efforts below.

In the summer of 1838 a group of Western Seminole Chiefs and warriors returned to Florida to persuade the Florida Seminoles to move to the West. As a result, on February 25, 1839, 196 Florida Seminoles were sent to the West. Foreman, "Indian Removal", Univ. of Okla. Press, Norman, p. 370.

In 1840 a party of Western Seminoles traveled to Florida to persuade the Florida Seminoles to remove West. Some 200 Florida Seminoles met with the Western Seminoles at Fort King on November 7, 1840, "but suddenly on the night of the fourteenth the 200 Indians in the neighborhood disappeared". (Ibid. pp. 374-376).

In 1842 General Worth made a temporary arrangement with the several hundred Seminoles remaining in the fastnesses of Florida to remain there under certain conditions. In 1849 Seminole emissaries from the West made efforts to influence these Florida Seminoles to remove to the West, and large financial inducements were offered them, "but they failed to influence the Seminole Indians to leave their native land". (Ibid.p. 384).

In 1851 another commission from the West was issued to travel to Florida to attempt to get the Florida Seminoles to migrate to the West, "but their effort also was fruitless". (Ibid. p. 385).

Other attempts were made in 1858 and 1859 which resulted in the removal of 240 Florida Seminoles to the West. (Ibid. p. 385; supra, p. 4).

It is thus evident that efforts to secure the removal of the few remaining Florida Seminoles had failed, and they elected to remain on their native lands in Florida.

The 365,854.39 acres acquired by the Seminole Nation of Oklahoma was not given to it, but were paid for by the Seminole Nation of Oklahoma: 200,000 acres were acquired under Article 3 of the Treaty of March 21, 1866, 14 Stat. 755, 2 Kapp.910, at 50 cents an acre; and a 175,000 acre tract, which was purchased by the United States from the Creek Nation under the Act of August 5, 1882, 22 Stat. 257, 265, for $175,000.00, or $1.00 an acre, which amount was reimbursed to the United States by way of Government offset in the case of Seminole Nation v. United States, 102 Ct.Cl. 565 (1944), at pages 589-592, 622-624.

The Florida Seminoles, having had ample opportunities to join their brethren in the West, and refused to do so, can have no claim to any of the assets acquired in the West by the Seminole Nation of Oklahoma.

In the case of the Eastern Band of Cherokee Indians v. United States and the Cherokee Nation, 117 U. S. 288 (1886), a band of Cherokee Indians who remained East while the main group of Cherokee Indians were removed to lands West by the Military Forces of the United States, claimed a share of the benefits received by the Cherokee Nation which had accrued to it West of the Mississippi River, a case similar to the claim advanced by the Florida Seminoles against the Seminole Nation of Oklahoma. The United States Supreme Court, at pages 309, 311-312, held:

> "The Cherokees in North Carolina dissolved their connection with their Nation when they refused to accompany the body of it on its removal, and they have had no separate political organization since. Whatever union they have had among themselves has been merely a social or business one. * * *
>
> * * * *
>
> " * * * If Indians in that State, or in any other State west of the Mississippi wish to enjoy the benefits of the common property of the Cherokee Nation, in whatever form it may exist, they must, as held by the court of claims, comply with the constitution and laws of the Cherokee Nation and be readmitted to citizenship as there provided. They cannot live out of its Territory, evade the obligations and burdens of citizenship, and at the same time enjoy the benefits of the funds and common property of the Nation. Those funds and that property were dedicated by the constitution of the Cherokees, and were intended by the Treaties with the United States, for the benefit of the united Nation, and not in any respect for those who had separated from it and become aliens to their Nation.
>
> "We see no just ground on which the claim of the petitioners can rest to share in either of the funds held by the United States in trust for the Cherokee Nation; and the decree of the Court of Claims must, therefore, be affirmed, and it is so ordered." (Court's italics).

This same holding applies also to cases litigated under the Indian Claims Commission Act. The Prairie Band of Potawatomi Indians, et al., Appellees v. The United States, Hannahville Indian Community, et al., Appellants, 143 Ct. Cls. 131 (1958), cert. denied, 359 U. S. 908 (1959).

With the removal of Billy Bowlegs, the last hostile Seminole Chief, and his followers, to the West in 1858 and 1859, the United States made no further efforts to induce the few remaining Seminoles in Florida to join their brethren in the West.

Congress, by Act of March 3, 1859, 11 Stat. 409, decided that the interest on the second fund of $250,000, payable to the Seminole Nation west, under Article 8 of the Treaty of August 7, 1856, was then due, the Florida Seminoles "having joined their brethren in the West."

The few Seminoles electing to remain in Florida, having had many opportunities and inducements offered them to join their brethren in the West, thus completely dissolved their connections with the Seminole Nation in the West, and under the holdings of the above court decisions, are not entitled to any of the benefits which accrued to the Seminole Nation in the West.

The only interest the Florida Seminoles have in common with the Seminole Nation of Oklahoma is its just and proper share of the proceeds of the judgment in the Florida land claim, entered in favor of the Seminole Nation as it existed in 1823 and 1832, when the Treaties of Fort Moultrie and Payne's Landing were executed by the United States with the Seminole Nation, and when the Florida lands were ceded to the United States for an unconscionable consideration. As the judgment represents additional consideration that the Seminole Nation as it then existed should have received at the time of the cessions of 1823 and 1832, the only fair way is to divide it on a population basis, on the number of each Seminole group nearest to the dates of the Seminole treaties of 1823 and 1832, in accordance with the established law.

Respectfully submitted,

Paul M. Niebell

Paul M. Niebell,
Attorney for the Seminole
Nation of Oklahoma.

September 8, 1954

EXHIBITS IN SUPPORT OF STATEMENT

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1. Rept. Comr. Ind. Affs., Nov. 25, 1844 . . . . . pp. 305, 317, 321-323, 475-478

2. Rept. Comr. Ind. Affs., Nov. 24, 1845 . . . . . pp. 448, 449, 450, 451, 456, 457, 459, 460

   Rept. of M. Duval, Seminole Sub-Agent, dated September 30, 1845 . . . . . pp. 529-531

3. Rept. Comr. Ind. Affs., November 30, 1846:

   Rept. of M. Duval, Seminole Sub-Agent, dated October 15, 1846 . . . . . pp. 278, 279, 280, 281 282

4. "Florida War", by John T. Sprague (1848), Appleton & Co., New York . . . . . pp. 444, 445, 506, 507, 508, 509, 510, 511, 512, 513

5. "Indian Removal", by Grant Foreman, Univ. of Okla. Press (1953 Ed) . . . . . pp. 370, 374, 375, 376, 377, 378, 384, 385

6. "The Five Civilized Tribes", by Grant Foreman, Univ. of Okla. Press (1966 Ed.) . . . . . pp. 267, 270, 271, 272, 273, 274, 275, 276, 277, 278

7. "The Seminoles", by Edwin C. McReynolds, Univ. of Okla Press (1957) . . . . . pp. 286, 287

8. 1858 Rept. Comr. Ind. Affs, dated Nov. 6, 1858:

   Rept. of Elias Rector, Supt. Indian Affs., Southern Superintendency, dated October 26, 1858 . . . . . pp. 126, 129, 134

   Rept. of Samuel M. Rutherford, U. S. Seminole Agent to Major Elias Rector, Sup't Ind. Affs., Fort Smith, Ark., dated August 18, 1858 . . . . . pp. 151, 152, 153, 154, 155

9. Rept. Comr. Ind. Affs., Nov. 26, 1859, A. B. Greenwood to Hon. J. Thompson, Sec'y of the Interior. . pp. 9, 18, 19, 26

10. Rept. Comr. Ind. Affs., dated November 26, 1859:

    Rept. of Samuel M. Rutherford, U. S. Seminole Agent, New Seminole Agency, to Elias Rector, Sup't Ind. Affs., Fort Smith, Arkansas, dated August 29, 1859 . . . . . pp. 183, 184, 185

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No. 9.

REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS.

DEPARTMENT OF WAR,
Office Indian Affairs, November 25, 1844.

SIR: The number of Indians who have been removed to the West has not changed for the last twelve months by any active movement of the department, nor at all, except that sixty Chickasaws have been added to the number, by self-emigration from the State of Mississippi. They are receiving subsistence out of their own funds, according to the treaty of 1834. Any other increase or (which is more probable) diminution of those east or west has been occasioned by births or deaths. Contracts have been made for the removal of the Miami Indians now in the State of Indiana, and of the Choctaws, who, under the provisions of the treaty of 1830, have remained until now in the State of Mississippi. A small party of the New York Indians, it has been said, desired to emigrate to the West. This has been met by counter representations, restricting the number of those having such a wish and entitled to participate in the benefits of the treaty to very few; and I believe that neither the interests of the State of New York nor of the United States will be promoted in any degree by the emigration of as many as wish to go, while the United States will be burdened with an expenditure utterly unproductive of benefit in any quarter, and of probable positive injury to the Indians. The best information I possess, moreover, leads to the belief that the idea of emigration has been or will be abandoned. (Appendix 1.)

You will find herewith a tabular statement, (2,) showing the number of Indians indigenous to the country beyond the Mississippi river, how many have been removed to the west, how many are now there, and how many remain east; how many have emigrated within one year, and are now on subsistence, and at what cost.

In my last report, a difficulty very improperly raised and utterly without foundation, in relation to the cession of Isle Royale, in Lake Superior, by the treaty of 1842 with the Chippewas, was mentioned, and the views of this office given respecting it. As the subject is one of interest, and the property involved is very valuable, I again present these views, in which the commissioner who negotiated the treaty concurred, (3.) Plainly correct as they appeared to be, it was important to adjust the matter, and at once, lest it should fester, and be made important by the ill feeling it might engender. Robert Stuart, Esq., acting superintendent of Indian affairs in Michigan, was instructed on the 5th of April last to attend to this duty, which he performed very satisfactorily, enclosing me, under date of 21st September, from Detroit, a compact with the Chippewas, by which they confirmed the cession, and expressed themselves satisfied that Isle Royale was included in it. This acknowledgment cost the United States $400 worth of gunpowder and $100 worth of fresh beef, (4.) I am

Nezpercés tribe of Indians have adopted a few simple and plain laws as their code, which will teach them self-restraint, and is the beginning of government on their part.

It is painful, however, to know that a distillery for the manufacture of whiskey was erected and in operation west of the Rocky mountains, which, however, the sub-agent, sustained by the resident whites, broke up and destroyed. There was in February last an affray between a very boisterous and desperate Indian and his party and a portion of the settlers, which ended in the death of several of the combatants. This unfortunate affair was adjusted, as it is hoped, satisfactorily and permanently, by the sub-agent, though he seems to apprehend an early outbreak. I trust he is mistaken.

An Indian youth of the Chinnook tribe or band, in Oregon, accompanied Lieutenant Fremont, of the corps of topographical engineers, on his return to the United States from his late tour of duty in the far West. Mr. F. took charge of the lad, whose name is William, at the instance of the missionaries, who believed, and no doubt correctly, that much benefit would result to the weak settlements, so remote from all others, from William's representations, on his return in the spring, of what he saw and heard on the shores of the Atlantic, and on his way to them. Lieutenant F. made known to me that he was in Washington, and I have been so fortunate as to secure a place for him in the family and under the direction of the Rev. O. Douglass, of Philadelphia, who has charge of the Mariner's church in that city. He will receive all the advantages of tuition, all the teaching of morals by example, and all the piety that religious instruction and Christian lives can impart, from this good man, or, in his absence, from the Rev. Griffith Owen, who is his worthy substitute on such occasions, and his aid when they are together. William, who is about 18 years old, manifests great aptitude, and can make himself very well understood in the English language now, although a few months ago he did not understand a word of it. He appears, moreover, to be well tempered, and will profit by the opportunities afforded him for mental culture. Lieutenant F. will have the gratification of having added to the other good services he rendered on his late tour, that of being the cause of opening one human mind to the light of knowledge, and, possibly, through its agency, thus enlightened, of preventing future Indian murders, or, it may be, Indian wars.

Respectfully submitted.

T. HARTLEY CRAWFORD.

Hon. WILLIAM WILKINS,
Secretary of War.

List of documents accompanying the report of the Commissioner of Indian Affairs.

1. Extract from letter of S. Osborn.
2. Census of Indian tribes.
3. Extracts from two letters of Robert Stuart.
4. Letter from Commissioner of Indian Affairs, and compact between Robert Stuart and Chippewas of Lake Superior and Missouri.
5. Letter from Commissioner of Indian Affairs to Major W. Armstrong.

Statement showing the number of each tribe of Indians, whether natives of, or emigrants to, the country west of the Mississippi, with items of emigration and subsistence.

NAMES OF TRIBES.	Number of each tribe indigenous to the country west of the Mississippi river.	Number removed of each tribe wholly or partially removed.	Present western population of each tribe wholly or partially removed.	Number remaining west of each tribe.	Number removed since date of last annual report.	Number of each now under subsistence west.	Daily expense of subsisting them.
Appachees	20,280						
Arickarees	1,200						
Arrapahoes	2,500						
Assiniboins	7,000						
Blackfeet	1,300						
Caddoes	2,000						
Camanches	19,200						
Cherokees	-	25,911	25,911	1,000			
Cheyenes	2,000						
Chickasaws	-	4,990	4,111	20	60	60	$3 85
Chippewas, Ottowas, and Pottawatomies, and Pottawatomies of Indiana	-	5,779	2,028	92			
Chippewas of the Lakes	-	-	-	*7,605			
Choctaws	-	15,177	*12,410	*7,000			
Creeks	-	24,594	24,594	744			
Crees	800						
Crows	4,000						
Delawares	-	826	1,059				
Eutaws	19,200						
Flatheads	800						
Florida Indians	-	3,834	(a) *3,136				
Gros Ventres	3,300						
Iowas	470						

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STATEMENT—Continued.

NAMES OF TRIBES.	Number of each tribe indigenous to the country west of the Mississippi river.	Number removed of each tribe wholly or partially removed.	Present western population of each tribe wholly or partially removed.	Number remaining east of each tribe.	Number removed since date of last annual report.	Number of each now under subsistence west.	Daily expense of subsisting them.
Kansas	* (b) 1,700						
Kickapoos	-	588	505				
Kiowas	1,800						
Mandans	300						
Menomonies	-	-	-	*2,500			
Miamies	-	-	-	661			
Minatarees	2,000						
New York Indians	-	-	-	3,293			
Omahas	*1,301						
Oneidas of Green Bay	-	-	-	*722			
Osages	4,102						
Otoes and Missouries	931						
Ottowas and Chippewas, together with the Chippewas of Michigan	-	-	-	7,055			
Pagans	30,000						
Pancas	*777						
Pawnees	12,500						
Peorias and Kaskaskias	-	132	150				
Piankeshaws	-	162	98				
Pottawatomies of Huron	-	-	-	100			
Quapaws	* (c) 400						
Sacs and Foxes of Mississippi	(d) 2,348						
Sacs of Missouri	(d) 414						
Senecas from Sandusky	-	251	*125				
Senecas and Shawnees	-	211	211				
Shawnees	-	1,272	887				
Sioux	25,000						

Snakes	1,000						
Stockbridges of Green Bay	–	–	–	207			
Stockbridges and Munsees, and Delawares and Munsees	–	180	278	320			
Swan Creek and Black River Chippewas	–	62	62	113			
Weas	–	225	176	30			
Winnebagoes	–	4,500	2,183				
Wyandots of Michigan	–	–	–	75			
Wyandots of Ohio	–	664	*585	50			
	168,290	89,348	85,473	31,587	60	60	$2 85

(a) Exclusive of negroes.

(b) The report lately received sets them down as between 1,600 and 1,800.

(c) Report says somewhat *less* than 400.

(d) These Indians do not properly belong to this column, but are so disposed of because the table is without an exactly appropriate place for them. Originally their haunts extended east of the river, and some of their former possessions on this side are among the cessions by our Indians to the Government, but their tribes have ever since been gradually moving westward.

* Those marked with an asterisk are the enumerations furnished in the latest reports from the respective agencies and sub-agencies.

knowing that, when once where it is, he will not be satisfied until he obtains a sufficiency to make him drunk, even at the sacrifice of his most valuable property. The Quapaws possess a most beautiful country, about one-half of which is prairie, and nearly all in a body; the remainder is generally good land, and well timbered, with very pure water.

2. *Senecas and Shawnees.*

This tribe is gradually but slowly advancing in civilization and agricultural pursuits. The Shawnee part of the tribe may be considered a sober, industrious, and a farming people. They raise corn, wheat, oats, pumpkins, beans, and a variety of garden vegetables. They have in a great degree quit the chase, and depend almost exclusively upon the cultivation of the soil for a support, from which they draw an ample competency. One of their head men, who is really a pattern for the rest of the tribe, makes corn to sell. They made preparation this year for cultivating much more land than usual, but the heavy rains and the swelling of the Neosho and Pomme de Terre rivers and Lost creek prevented their doing so; consequently, their crops are much short of what was at first anticipated; nevertheless, they will make, I think, a sufficiency to carry them through the next year. The freshets also swept off a part of their stock. The Seneca part of this tribe is more dissipated than their brothers the Shawnees, nor are they so industrious; their farms are not so well tilled, nor are they as large, nor is their improvement in civilization as perceptible; yet they are an honest people. This tribe is entitled under treaty stipulations to a saw mill, to be built by the Government of the United States, which I earnestly hope will be done, as the benefits accruing to them from the same would be great. The mixed band of Senecas and Shawnees has a well-watered and valuable country, about one-third of which is prairie of the best quality. The northern boundary of their country adjoins the southern part of that of the Quapaws.

3. *Senecas of Sandusky.*

It would be doing this tribe great injustice not to say that they, too, have morally improved in the course of the past year. They are decidedly in a better condition now than I have ever known them to be. When I first came here, I found them as much or more addicted to drunkenness than their neighbors, (Senecas and Shawnees.) This was no doubt owing to their contiguity to a whiskey distillery which is located in the State of Missouri, within a mile of the Seneca mills, and as near the frontier as it could be placed, and which carried on the manufacture of ardent spirits on a very extensive scale. Being in their immediate neighborhood, together with the ready facility of procuring it, which could be done by giving corn in exchange when they had no money to purchase with, necessarily subjected them to the direful effects of intemperance more than either of the other two tribes of this agency; but I am happy to be enabled to inform you that they drink much less than formerly. I find powerful auxiliaries, in my efforts to make the Senecas a sober people, in the persons of their two chiefs, who use their influence with the people in inducing them not to drink whiskey. The Senecas have also suffered greatly during the past spring and summer from the overflows of the watercourses of their coun-

try. The Cowskin and Grand rivers were higher than they were ever before known to be, carrying off with their rapid currents their stocks, fencing, &c. But, notwithstanding the losses sustained by the floods and almost constant rains during the cropping season, they have, with the assistance of the income of their mills, if kept in operation, an abundance for next year's consumption. The mills were much damaged by the freshets last spring—so much so, that I am of the opinion they will not be of any service to them without repairs six months longer. The same treaty which provided for the building of these mills also provides for their being kept in operation by the Government; but, being fully aware of the incalculable benefits these people derive from their mills, I have advised them to appropriate a portion of their annuity (which they can easily do) to repair them, so as to be kept in successful operation, which they have consented to do. The three tribes of this agency stand well affected to each other, with all the neighboring tribes, as well as with the people of the United States, and would, I believe, if left alone by unprincipled white men, who are constantly intriguing with them for sinister designs, remain so, and would give the agent but little trouble. They have a most beautiful and valuable country, and ought to be, as I believe they are, a contented people, and, were it not for the continued efforts of whiskey dealers and intriguers to draw them from the path of morality and virtue, would soon become a moral, virtuous, enlightened, happy, and a Christian people.

I would most respectfully suggest an alteration of, or a supplement to, the existing laws in relation to the introduction of whiskey into the Indian country—they are defective. Whiskey dealers are generally men as much in want of money or property as they are of moral character. What, then, do they care for a fine of $300, or even of a larger amount? They know that nothing can be made by a prosecution; and they therefore, in some instances, boldly declare that they will traffic in the article. Make offences of that character punishable by imprisonment as well as subjecting them to a heavy fine, and I am well convinced that your agent will be enabled, in a great degree, to carry out the benevolent designs of our Government, in its laudable efforts to civilize and enlighten the race of the red man. I hope and trust that, if I have not gone sufficiently into details respecting the affairs of this agency, it will be overlooked, as I have recently had a long and severe attack of sickness, from which I am but very slowly recovering, and am so feeble and weak, even at this time, as to make it very painful to me to write at all.

Accompanying this will be found the reports of the various mechanics employed in this agency.

All of which is most respectfully submitted.

With high regard and esteem, your very obedient servant,

B. B. R. BARKER.

Hon. T. HARTLEY CRAWFORD,
Commissioner of Indian Affairs, Washington City, D. C.

(80.)

SEMINOLE AGENCY, *August* 26, 1844.

SIR: I have the honor of laying before you the annual report relative to the subjects of this sub-agency.

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The delegation that visited Washington in May last represented to the Commissioner the situation of those of their tribe residing in the Cherokee nation; it only remains for me to state, in regard to those, that, on the return of said delegation, they found their people encamped on the prairies in the neighborhood of Fort Gibson, destitute of subsistence; the rise of the waters of the Arkansas and Grand rivers had driven them from their homes, with the loss of all they had, not only destroying the crop in the ground, but sweeping off their old corn in the cribs.

The number of sufferers by this calamity that are left entirely destitute are two hundred and ninety-five; they represented to me they had been subsisting on berries and what they could obtain by begging. In view of their situation, I made a requisition on Colonel Mason, commandant at Fort Gibson, for half rations for eighteen days, as a temporary relief; and, to the credit of his feelings for their suffering situation, he complied promptly, which I trust will meet the cordial approbation of the department.

The situation of those people requires the prompt attention and action of the Government. I would recommend removing them to the south side of Arkansas, into the Creek country, and furnishing them with rations until the commissioners find a location for them.

The Seminoles living on the Deep fork, Elk creek, and Little river, in the Creek nation, have large crops of corn, potatoes, and rice, on hand, and, from present appearances, they will have a fair average crop; in which event, they will have a large surplus. They likewise raise melons, pumpkins, and beans—the latter to considerable extent.

They have increased their stock of horses, cattle, and hogs; and all about them evinces that they see the necessity of throwing themselves on their own resources, for enabling them to procure the necessaries of life.

The great cause of dissatisfaction to the Seminoles is, that they have no country they can call their own. This has a tendency to depress their feelings, and is a continual source of uneasiness; and, until removed, it need not be expected they will become content.

They utterly repudiate the idea of becoming a constituent part of the Creek nation, or submitting to the Creek laws in the remotest degree; and, in view of circumstances that have been recently developed, it is not surprising this should be the case; and I am fully convinced it would be highly impolitic and improper that it should take place, or that the Government should make any attempt to make them a constituent part of the Creek nation.

On my arrival among those people, and for a year or more subsequent, all my predilections were in favor of their becoming a constituent part of the Creek nation, and all my efforts were directed in endeavoring to bring about that result.

Without going into any detail of the causes that have produced a change in my views, suffice it to say, that causes do exist, of such a character as would convince any man, capable of connecting two ideas, that the result would be similar to that which took place in a neighboring nation, by bringing into collision two parties that had no community of interest or feeling, nor never can have.

I have no hesitation in saying, the further apart those two people are, the better for both.

In my letter of the 13th instant I introduced to your notice a section of country called the neutral ground, belonging to Government, west of the

Cherokee nation, which (as has been represented) would be an eligible location for the Seminoles; and I see by the map it lies contiguous to the Senecas and Shawnees, and by locating the Seminoles there they might all be thrown into one agency.

Being well acquainted with the feelings and views of both parties in regard to the Seminoles locating in any portion of the Creek country, and, in my opinion, of the impracticability of the commissioners being able to make any arrangement that will be satisfactory to both parties, is the reason why I have introduced this subject into this report. I have read and heard much of the generosity, magnanimity, and nobleness of the Indian character; this (to some extent) may all be well enough in their natural state, before their intercourse with the whites; but, so far as my observation has extended, those are qualities that do not exist, or have a very limited operation among those who have made the greatest advances toward civilization, or whose location admitted of free intercourse with the whites. Under these circumstances, I have uniformly found selfishness absorbs every generous, magnanimous, and noble emanation of the soul.

Among the poor, neglected, and despised Seminoles, there is as much honor and integrity as among any other tribe, though they may be far in advance of them in the habits of civilized life; and to their credit it can be said, that the intercourse of the sexes is confined to the connubial state. No cases of infidelity in this respect occur among them; they have great affection for their children, pay much deference to their wives, and when at home in their families appear to appreciate the enjoyments of the domestic circle. I admit, however, with all their good qualities, they have many bad ones; but if left to themselves, and not instigated by bad white men, they would have much fewer of these. They are extremely indolent, though (in view of their recent removal from a congenial climate, where the spontaneous productions of the soil supplied them with nearly all their wants, so that little exertion was required on their part) it is not a matter of surprise; under similar circumstances, the same result would have attended the whites. Many of them, however, have become sensible of the change of circumstances, and that exertion is necessary on their part to enable them to obtain the necessaries of life, and are applying themselves accordingly; and no doubt this eventually will be the case with most of them; and it would tend to produce this result, if they had a country they could call their own.

On the 31st ultimo, the whole tribe met in council, which circumstance was embraced to obtain their numbers. On each band or town making their returns, the result was, three thousand one hundred and thirty-six, (3,136,) exclusive of negroes. Four hundred of them belonged to the Appalachicola band, E-con-chattimicco, their chief; and one hundred and fourteen formerly belonged to Blunter Davy's band, Co-ah-thlack-co, their chief; the balance Seminoles proper.

The school under the charge of John D. Bemo, a very promising young Seminole, went into operation the middle of March last. On its first opening, there were forty children in attendance; they came under the impression that they would be found their meals. Finding this was not the fact, the numbers were reduced to fifteen, at which it has remained stationary. Accompanying this will be found the school report.

John D. Bemo's course has fully sustained the good opinion his friends had formed of him; and no doubt, if he continues faithful, he will be

instrumental in dispensing much good to his people. He preaches regularly once, and frequently twice a week, to full houses; his congregation are principally blacks, though several Seminoles have joined the church since he came among them, and a marked change has taken place in the manners and habits of the Indians immediately in the neighborhood of the school, which evinces that he has exercised a salutary influence over them.

Since my arrival in the Indian country, I have endeavored to become conversant with the Indian character, and, so far as I have succeeded, the conviction on my mind is, that it is morally impossible to effect (to any extent) any change in the habits or manners of the adult Indian; and the only possible way by which any permanent good could be done would be to take hold of the rising generation, establish schools among them based upon proper principles, (for my views of which I refer you to the Fort Coffee establishment,) and place the children not only under competent teachers, but those who have been regularly educated for the ministry, and who are willing to devote their time, in the absence of all selfish views, and to do good for its own sake. Those are the men, and those only, that will be likely to do good to the poor Indian; and, inasmuch as example preaches louder than precept, the example of such men would have a powerful influence; and I assure you, so far as my observation has extended, the example heretofore set, instead of exercising a salutary influence, and producing a healthy and moral atmosphere, has had a tendency to produce very deleterious and pernicious effects on the minds of the Indians.

The Choctaws (much to their credit, and to the honor of those who have aided them in the good work) are the pioneers in establishing a permanent system of education for their people in their own country; and though the Seminoles have not the means to follow after to the same extent, yet they might go to the extent of their means, and by a proper application of the funds now due them for educational purposes, together with those becoming due annually, I have no doubt arrangements might be made (in fact I know it) with the missionary boards, not only to furnish teachers and sustain them, but supply funds in addition to the above, sufficient to educate and board all the Seminole youth of a proper age to receive instruction. Much might be said on this subject, but, being somewhat acquainted with causes and effects, I deem it unnecessary.

The introduction of whiskey into the Indian country has increased and continues to increase to an alarming extent. I respectfully refer you to my last annual report on this subject, for my views as to the only means which, in my opinion, can be adopted to put a stop to this pernicious traffic.

The blacksmith has been regularly engaged on ploughs, axes, and hoes, together with repairing guns and gun locks, and gives general satisfaction to the Indians.

The following persons are employed by this sub-agency:

John D. Bemo, teacher, Daniel P. Logan, blacksmith, at $600 per annum.

Isaac Patterson, striker, $240 per annum.

Abraham, interpreter, $300 per annum.

All which is respectfully submitted.

Very respectfully, your most obedient servant,

THOMAS L. JUDGE,
Sub-Agent Seminole Indians.

Major WILLIAM ARMSTRONG,
Acting Superintendent Indian Affairs, W. Territory.

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(81.)

OFFICE OF INDIAN AFFAIRS,

Detroit, October 10, 1844.

SIR: By my last annual report you were informed of the gratifying evidence exhibited by the Ottowas and Chippewas of this superintendency, that the benevolent efforts of the department had produced most happy results among them; and it will no doubt afford you pleasure now to learn, that no untoward circumstance has since occurred to mar the cheering hope of ultimate success. Most of the bands are rapidly improving their condition, and evince great anxiety to adopt the manners and customs of the whites, and participate in our social and political advantages. The accompanying memorial of the chiefs to the President of the United States sets forth the earnest desire of both these tribes to obtain the boon of citizenship, and I sincerely hope that their prayer may be taken into favorable consideration; for nearly half their number stand so high in the scale of moral and social virtues as would render them worthy and valuable members of any community, and the passage of an act to admit to citizenship even such of them as might be deemed sufficiently advanced in civilization, &c., to render their being incorporated with us safe and advisable, would no doubt greatly stimulate them to stronger efforts for self-improvement. A majority of them manifest a growing disposition to have their children educated and instructed in the arts of civilized life; and a considerable number have entirely abandoned the use of ardent spirits. At the annual payments, we have endeavored to induce the whites to desist from selling or giving liquor; but this season, at the Mackinac payment, no influence was exercised over them with regard to it. I merely urged the Indians themselves to refrain, and thus show that they had acquired the mastery over this ruinous and degrading propensity. The pleasing result was, that not over fifty of their whole number (say 3,000) yielded to the temptation; still they will need every shield with which they can be encircled by the Government, to protect them against the machinations of the whiskey dealer. The bands which have remained in Michigan of the Swan Creek and Black River Chippewas are rapidly emerging from their late degraded condition: they have become industrious and economical. Not one of the principal band (which consists of upwards of 100) makes any use of intoxicating drink; nearly all the adults have become professors of religion, and are under the care of the Methodist mission, which has been the means of bringing about these happy results. The other missions and schools within this superintendency are also laboring successfully, and our country at large owes these devoted men a heavy debt of gratitude. I have been several times solicited by these Indians to present to the department the serious loss they have sustained in consequence of the *unreasonable delay* of the General Land Office in disposing of the district ceded to the United States by the treaty of May, 1836. They allege, that, if the lands had been sold according to the terms of the treaty, ("as soon as practicable,") they would have yielded a large surplus over the advances made to them by the Government, &c. However true this may be, I know of no relief the department can afford them, without the interposition of Congress. In compliance with your instructions, I proceeded to the Lake Superior country on the 18th July last, in order to settle the difficulties which had been created with the Indians in relation to the cession of Isle Royale

No. 10.

REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS.

WAR DEPARTMENT,
Office Indian Affairs, November 24, 1845.

SIR: Since the last annual report from this office, the emigration of Indians to the west of the Mississippi has been much greater than for several years past. This is chiefly owing to the removal of Choctaws from the State of Mississippi to the territory set apart for them west of the Arkansas. Under the contract entered into with Messrs. Anderson, Forrester, Cobb, and Pickens, for the emigration and subsistence of these Indians, operations were commenced about the 1st of January last, and a party of eleven hundred and eighty-two have removed, and are now under subsistence, at a cost to the government of $26 71 for removal per capita, and $20 for subsistence of every Indian twelve months after his arrival west. From the latest information received at this office another large party is prepared to start, and will probably set out in the course of the present month, as that portion of the scrip to which they are entitled has been sent to Major Wm. Armstrong, the actings uperintendent of Indian affairs for the western territory, who has been charged with the superintendence of their emigration. This office has rendered all possible aid to effect the removal of these people to their new homes, and thereby render their condition more happy and agreeable to themselves than it has been. It is made obligatory on these people that they must remove, or signify their intention so to do, before any portion of the scrip due them can be issued; and it is confidently expected that, before another year has gone around, the Choctaws still remaining east will have joined their brethren in the western territory, where, once again united, they will, under the protecting and fostering care of the government, become an enlightened and contented people.

The few remaining Creeks in Alabama and Georgia, amounting in number to about one hundred and sixty, including slaves, are prepared to remove. The latest intelligence received from them represents that they are only awaiting a rise in the waters to emigrate. Instructions have been given to the acting superintendent west to contract for their subsistence for one year after their arrival in the Creek country. The contract for their removal was entered into in August last, at a cost of $17 25 per capita.

The New York Indians, or rather a portion of them, have repeatedly applied to the department for the proper steps to be taken for their emigration. It was not deemed expedient to enter into any arrangements for this purpose until the department was assured that a sufficient number to justify the expenditure incident to the appointment of an agent was prepared to remove. A delegation of these people having a short time since visited Washington, and reiterated their desire to go west, they were informed that their wishes should be gratified in case two hundred and fifty would be prepared to emigrate. An agent was appointed to superintend their emigra-

tion, and the department having been advised that the requisite number were ready, the necessary funds have been placed in his hands, to conduct them to their new homes, for which they were expected to leave about the 20th instant.

Within the last year, according to the muster-rolls received at this office, about one hundred Chickasaws have removed to the west of the Mississippi, and it is believed that very few of these people are now east of that river.

By the treaty entered into with the Miamies on the 28th November, 1840, they obligated themselves to remove at the end of five years from that time. A contract was, therefore, entered into for their removal, and it was expected that they would have set out last spring, the agent having been instructed to leave nothing undone to effect the desired result. Contrary to the anticipations of the department, these people yet remain in Indiana; but it is to be hoped that they will be emigrated in the course of the ensuing year.

The Sacs and Foxes, according to the stipulations of the treaty entered into with them on the 11th October, 1842, to remove to their new homes, in a country to be set apart for them, within three years from the date thereof, have commenced their emigration. This was much to be desired, as the incursions upon them by the whites rendered a change of location highly necessary, calculated as it must be to render their situation more advantageous to themselves. Faithful to their obligations, these people, reputed brave and noble, and fully understanding the benefits which must naturally follow such a course, have taken up their march for the country assigned them for their future homes; two tracts having been offered them, to choose that one which, on examination, they may think best suited to their wants. Some difficulty occurred in locating these people, as they expressed a desire to have their homes on the Kanzas; but this wish could not be complied with, in consequence of the Kanzas country being owned by the people of that name. They made application, however, to be allowed to winter on the Kanzas river, but were refused permission to do so by my predecessor, and there the matter rests. About twenty-two hundred of them have removed at different times, according to the accounts received from Captain John Beach, the agent in charge; Powsheik, and his band of Foxes, being the last who were reported to be encamped on the banks of the Raccoon river, and who were expected to cross the Missouri by the 11th of October. For the prompt manner in which these people have fulfilled their treaty stipulations, and the fidelity which they have shown in meeting their engagements, they are entitled to the highest regard and commendation of the government.

A tripartite treaty was concluded, on the 4th of January last, between the United States, the Creeks, and the Seminoles. By the stipulations therein entered into, the Seminoles have been permanently located among the Creeks, and the bands of the former who had settled without authority on tracts belonging to other tribes have been united. This arrangement is highly gratifying; and it is to be hoped that these Indians, who have given the government at different times so much trouble, will now become settled, and, following the example of the tribes by whom they are surrounded, may become a contented and happy people.

The accompanying statement (marked 1) exhibits the number of the various tribes of Indians east and west of the Mississippi river, whether native of or emigrant to the country west; those emigrated since the last annual report, as well as those remaining east; also, that portion under

subsistence, and the cost of the same. It is proper, however, to remark that, respecting those tribes with whom there are no agents of the government, the population is estimated by conjecture and such data as is furnished by traders and others who have travelled among them. More accuracy is given to the numbers of those tribes immediately under the care of the Indian agents and sub-agents, by the several census and muster rolls returned to the department.

I am sorry to inform you that, notwithstanding the efforts which have been made to treat with the Winnebagoes on fair and liberal terms for the sale of the territory held by them within the limits of what is usually called the Neutral Ground, all attempts at negotiation have failed. It was hoped that a treaty might be made with these Indians during the past season, and instructions were accordingly given to his Excellency Governor Dodge, of Wisconsin, to effect this object. He was, however, unsuccessful. I would respectfully refer you to his report (2) on this subject for all the circumstances connected with this effort, as well as the recommendations made by him in order to insure success in any future attempt that may be made in this matter. Coming as these do from one so intimately acquainted with the Indian character, and so worthy of confidence, as Governor Dodge, they deserve the most respectful consideration.

Negotiations are at present pending with the Chippewas, Ottowas, and Pottawatomies of the Council Bluffs sub agency, with a view to provide for their removal from their present location, and their establishment in a district of country where they will be free from the incursions of the whites upon them.

Governor Dodge has been instructed to treat with the Oneidas of Green bay for the purchase of their lands in that section of Wisconsin, and their removal to the southwest of the Missouri river. Nothing has yet been heard from him on the subject, but hopes are entertained that he will be successful.

Herewith you will find fiscal tables (3) showing—

1. The amount drawn out of the treasury between the 30th June, 1844, and 30th of June, 1845, inclusive, on account of appropriations for the half calendar year ending the 30th of June, 1843, and the balance remaining undrawn;

2. The amount drawn between the 30th of June, 1844, and the 30th of June, 1845, inclusive, on account of appropriations under the act of the 3d of March, 1843, for other purposes than the foregoing, and the balance remaining undrawn;

3. The amount drawn between the 30th of June, 1844, and the 30th of June, 1845, inclusive, on account of the appropriations for the service of the Indian department for the fiscal year commencing 1st of July, 1843, and ending 30th of June, 1844, and the balance remaining undrawn;

4. The amount appropriated for the service of the Indian department for the fiscal year commencing July 1st, 1844, and ending June 30th, 1845, inclusive, and the balance remaining undrawn.

There is likewise annexed an exhibit of the amount in stocks and held in trust for various Indian tribes, as well as of the sums on which Congress appropriates the interest annually, as called for by certain treaties, instead of investing the same in stocks. (4.)

The annuities and other payments for the year, to meet treaty stipula-

tions, have been promptly remitted, and have either been paid or are in process of payment to those entitled to receive them.

The records of this office show that a large number of claims connected with reservations and grants of land to individual Indians have been disposed of during the past year. The greater portion of them were those of Choctaw Indians, under the 14th article of the treaty with that tribe, of September, 1830, which have been the subject of frequent action by Congress since 1836.

The commissioners appointed under the "act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit creek, concluded in September, 1830," approved 23d August, 1842, made a final report of their proceedings to the President on the 16th of June last. The claims reported on by them, so far as the decisions of the commissioners were favorable to the claimants, received your concurrence, and have been acted on by this office, with a view of placing in the possession of the various Indian claimants the evidence of the admission and settlement of their claims, and that no further delay should operate to prevent the removal of the claimants and their families from the State of Mississippi to the country occupied by their kindred west of the State of Arkansas.

According to the provisions of the act passed at the last session of Congress, confirming the valuations made by Messrs. Caldwell, Waggoner, and Justice, of the improvements on the lands in Ohio ceded by the Wyandots under the treaty of the 17th of August, 1842, funds were placed, during the past season, in the hands of the agents of the department for payment to the claimants. It was a condition precedent to the liquidation of the various amounts, that the sums thus paid were to be "in full satisfaction of all claims and demands," under the 5th article of that treaty. This, I am informed, has met with much opposition; the agent, on the 13th October last, reporting that but few had accepted the terms, embracing but about one-third of the sum to be paid over; the balance refusing to receive the amount of their valuations.

The alleged difficulties among the Cherokees, I regret to state, remain still unsettled. A delegation of the party holding the authority of the nation, at the head of which is Mr. John Ross, the principal chief, has been in Washington for some time past. Several of the delegation of the old settlers' party have also been here, and delegates from the treaty party it is understood may shortly be expected. It is much to be desired, and I am in hopes, that during the winter the questions in which the difficulties among these people have their origin may in some manner be definitively settled.

It is scarcely necessary to enter into an analysis of the various reports from the superintendents, agents, and sub-agents of Indian affairs. They will be found appended to this report, numbered from 5 to 30. Upon referring to them, however, it will be seen that with a very few unimportant exceptions, the condition of the various Indian tribes under their charge has been peaceable and well disposed, and that but little change has taken place since the last annual report from this office. A disposition to improve their condition by adopting the habits and conforming to the pursuits of the white man continues to manifest itself to a very considerable and gratifying extent. The use of ardent spirits among a few of the tribes has been somewhat increased, while with most of them it has greatly

power to the President to make it an acting superintendency; and to appoint one or more sub-agents whenever, in his judgment, the same may become necessary and proper. This agent, to be useful and efficient at that remote point from the seat of government, should be paid a liberal salary, and clothed with sufficient authority to enable him to carry out the benevolent policy of the department, and to command the respect of the numerous tribes in Oregon. The Indians would look upon such a person as a protector, and refer to his arbitrament and decision those disputes and causes of complaint which have occasionally laid the foundation for bloody and long continued feuds among the different bands.

All which is respectfully submitted.

W. MEDILL.

Hon. Wm. L. Marcy,
Secretary of War.

LIST OF DOCUMENTS

ACCOMPANYING THE REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS.

No. 1. Statement of the number of Indians east and west of the Mississippi river, &c.
No. 2. Governor Dodge's report in relation to negotiation with the Winnebagoes.
No. 3. Fiscal tables.
No. 4. Statement of investments in stocks for Indians.

Reports of superintendents, agents, and sub-agents.

No. 5. Report of his excellency Governor J. Chambers.
No. 6. Report of John Beach, agent for Sacs and Foxes of Mississippi.
No. 7. Report of J. E. Fletcher, sub-agent for Winnebagoes.
No. 8. Report of A. J. Bruce, agent for Sioux.
No. 9. Report of his excellency Governor H. Dodge.
No. 10. Report of D. Jones, late sub-agent at Green Bay.
No. 11. Report of A. G. Ellis, sub-agent at Green Bay.
No. 12. Report of Wm. A. Richmond, acting superintendent at Detroit.
No. 13. Report of A. P. McReynolds, acting sub-agent at Saganaw.
No. 14. Report of James Ord, sub-agent at Sault St. Marie.
No. 15. Report of Wm. Armstrong, acting superintendent Western Territory.
No. 16. Report of P. M. Butler, late Cherokee agent.
No. 17. Report of James Logan, agent for Creeks.
No. 18. Report of A. M. M. Upshaw, Chickasaw agent.
No. 19. Report of James S. Raines, Neosho sub-agent.
No. 20. Report of M. Duval, Seminole sub-agent.
No. 21. Report of Thomas H. Harvey, superintendent at St. Louis.
No. 22. Report of Richard W. Cummins, agent at Fort Leavenworth.
No. 23. Report of Andrew Dripps, agent for Upper Missouri.
No. 24. Report of Joel Cruttenden, sub-agent for Osages.
No. 25. Report of Richard S. Elliott, late sub-agent at Council Bluffs.
No. 26. Report of A. J. Vaughan, sub-agent at Osage river.
No. 27. Report of W. P. Richardson, late sub-agent at Great Nemahaw.
No. 28. Report of Richard Hewitt, Wyandott sub-agent.
No. 29. Report of Joseph Sinclear, Miami sub-agent.
No. 30. Report of Stephen Osborne, sub-agent for the New York Indians.

School reports.

No. 31. Report of H. N. Thissel.—Winnebago.
No. 32. Report of S. R. Riggs.—Sioux.
No. 33. Report of Thomas S. Williamson.—Sioux.
No. 34. Report of Thomas S. Williamson.—Sioux.
No. 35. Report of T. S. Vanderbrock.—Menomonies.

No. 1.

Statement showing the number of each tribe of Indians, whether natives of, or emigrants to, the country west of the Mississippi river, with items of emigration and subsistence.

Names of tribes.	Number of each tribe indigenous to the country west of the Mississippi river.	Number of each tribe wholly or partially removed.	Present western population of each tribe, wholly or partially removed.	Number remaining east, of each tribe.	Number removed since date of last annual report.	Number of each tribe now under subsistence.	Daily cost of subsistence.
Assinaboins	a 7,000	-					
Appachees	b 20,280						
Arrapahas	a 2,500						
Arickarees	a 1,200						
Blackfeet	a 13,000						
Creeks	-	24,594	b 24,594	d 160	d		
Cherokees	-	25,911	b 25,911	e 1,220			
Choctaws	-	f 16,359	13,592	5,800	• 1,182	1,182	864 77
Chickasaws	-	f 5,090	4,211	-	100	97	4 604
Chippewas, Ottowas and Pottawatomies, and Pottawatomies of Indiana	-	5,779	g 4,298	b 92			
Chippewas of Swan creek and Black river	-	62	b 62	c 113			
Chippewas of the Mississippi and lake Superior	-	-	-	c 7,605			
Caddoes	b 2,000						
Camanches	b 19,200						
Crows	a 4,000						
Cheyennes	a 2,000						
Crees	a 800						
Delawares	-	826	• 1,039				
Eutaws	b 19,200						
Florida or Seminole Indians	-	3,824	3,136	h	-	i 3.100	i
Flatheads	a 800						
Gros Ventres	a 2,500						
Iowas	c 470						
Kickapoos	-	568	• 516				
Kanzas	• 1,607						
Kioways	b 1,800						
Miamies	-	-	-	• 650			
Menomonies	-	-	-	• 2,506			
Mandans	a 300						
Minnatarees	b 2,000						
New York Indians	-	-	-	b 3,293			
Ottowas and Chippewas of Michigan	-	-	-	c 7,055			
Osages	c 4,102						
Omahas	b 1,301						
Otoes and Missourias	b 931						
Oneidas of Green bay	-	-	-	• 720			
Pawnees	b 12,500						
Peorias and Kaskaskias	-	132	c 150				
Piankeshaws	-	162	c 98				
Pottawatomies of Huron	-	-	-	c 100			
Poncas	b 777						
Pagans	b 30,000						
Quapaws	• 947						

No. 1—Continued.

Names of tribes.	Number of each tribe indigenous to the country west of the Mississippi river.	Number of each tribe wholly or partially removed.	Present western population of each tribe, wholly or partially removed.	Number remaining east, of each tribe.	Number removed since date of last annual report.	Number of each tribe now under subsistence.	Daily cost of subsistence.
Stockbridges of Green bay	-	-	-	c 207			
Stockbridges, Munsees, and Delawares, mixed	-	180	* 268	320			
Sioux	b 25,000						
Sacs and Foxes of the Mississippi	* 2,200	-	-	-	j		
Sacs and Foxes of the Missouri	c 414						
Shawnees	-	1,272	* 928				
Senecas and Shawnees	-	211	* 341				
Senecas from Sandusky	-	251	* 153				
Snakes	a 1,000						
Weas	-	225	c 176	30			
Winnebagoes	-	4,500	c 2,183				
Wyandots of Ohio	-	664	* 555	50			
Wyandots of Michigan	-	-	-	c 75			
	179,129	90,630	82,112	29,999	1,282	4,379	869 37½

NOTES.

* Those marked with an asterisk, are reported this fall by agents of the government.

a Obtained from report of D. D. Mitchell in 1842, as the latest.

b From statement of last year.

c From census rolls of 1842–'43.

d Last year's statement put down those living east at 714, which must have been incorrect. A party of 160, more or less, are now emigrating, and they are said to be about all that are east.

e Obtained from census roll taken by Wm. H. Thomas, in 1841.

f Different from last year's statement, by 1,182 Choctaws, and 100 Chickasaws, since removed.

g 2,200 are reported lately by the sub-agent as being at Council Bluffs; the remainder, on Osage river, are enumerated from census of 1842.

h About 100 are supposed to be east.

i Reported by Major Armstrong. They are the Indians who settled on Cherokee lands, and, under treaty of 1845, have removed to their own country, receiving subsistence for six months at a cost of three cents and nine mills per ration.

j The Sacs and Foxes, at latest accounts, were on their way to the country selected for them south and west of the Missouri, under treaty of 1842.

The Indians of Oregon Territory are reported by Dr. White, United States sub-agent, at 42,000.

OFFICE OF INDIAN AFFAIRS.

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These people live in good comfortable houses generally. They have among them a large stock of horses, cattle, and hogs, but particularly of horses; they have good crops growing this season, consisting of corn, potatoes, cabbages, beans, and melons. They seldom sow wheat, oats, or any kind of small grains. Their saw and grist mills are in good condition, and when the water is not too scarce they do a fine business; but the present summer they have been idle a great portion of the time for want of water.

The mixed bands of Senecas and Shawnees number this year (27th August) 73 men, 79 women, and 89 children; making in all 241 persons. These people are rather more industrious; are not so much inclined to drink, and have more and better farms than their neighbors, the Senecas; and although they are the best farmers of any of the tribes in this sub-agency, yet even they never think of raising any thing to sell, with one or two exceptions. It appears to be contrary to their nature to ever think of selling anything that can be eaten. These, like the Senecas, generally live in comfortable cabins; have stock of various kinds—say horses, cattle, and hogs; and this year their corn, &c., looks very fine. These people frequently sow and raise small grain, such as wheat and oats.

This tribe, take them generally, are a high minded, proud, and honorable people. They are unusually friendly and true to their friends, but deadly hostile towards their enemies. They never promise you anything without performing it punctually; and anything that is promised them they expect unconditionally, which makes it important never to promise them any thing without a positive certainty of being able to comply with the promise; for although the most irrefregable testimony may be offered to show them the cause of the disappointment, yet no allowance will be made by them for circumstances.

The Quapaws number this year (21st August) 60 men, 66 women, and 121 children; making in all 247 persons.

The history of these people for the last ten years or more shows them to be a very lazy, ignorant, and superstitious people. It also shows that these people have dissipated to such an extent that they have become almost extinct; but the present number shows that they are increasing at this time; and the great number of children, as reported above, according to their whole number, is conclusive evidence that at the present time they are increasing in population rapidly.

These people do not hunt after nor drink whiskey as they used to do; they stay more in their own country; work more and hunt less; and all appear to have a desire to live, to act, and to be educated like white men. The leading men of this tribe all have good farms; and many of the young men say that this winter, under their new farmer, they will open farms and raise a crop the next season. This great change in these people in so short a time may all be justly attributed to the happy effect which the school has had which has been established among them. The Quapaws have fine crops this year. These people have not so much stock as the Senecas and Shawnees; they are a very poor people, but kind hearted and agreeable, and there is no people within my knowledge that need assistance and encouragement more than the Quapaws; and there is no people, in my opinion, who at the same time, are more worthy the assistance and protection of the United States government than they are.

I have, in compliance with the 18th paragraph Revised Regulations. No. 3, visited the school in the Quapaw country, and was furnished with a report of the condition of that institution by the Rev. Samuel G. Patterson: it is herewith enclosed, and marked B. I find about 20 scholars which are boarded, clothed, and taught at this institution; 16 of them are males, and 4 females. They are all intelligent and smart looking children. I am informed that these scholars are boarded, clothed, &c., by the Episcopal Methodist Missionary Society; and the teacher, I am informed, is paid for his services by the United States government. The only reason why there is not more of the Quapaw children at this school, is, that the means furnished it by the Missionary Society are insufficient to supply any more: and, as these Indians have made application to their great Father, the President, to send them, to help support and carry on this school, the $1,000 per annum, with all arrearages, according to 3d article of treaty of 13th May, 1833, I must beg leave to say that I hope this will be done. This institution is called the *Crawford Seminary*. It is situated on the east side of the Pomme de Terre, alias Spring river, between the river and a beautiful, rich, and fertile prairie, where they have commenced making a farm, (for this is a manual labor boarding-school.) The scholars are well clothed, and fed on good, sweet, and wholesome diet. The teacher of this institution, the Rev. Samuel G. Patterson, is a man under good character, and in every way competent and well qualified to have charge of this institution. At some future time I hope to be able to make a more minute and perhaps satisfactory report, as my opportunity to do so, I hope, will be better. At this time every thing within the bounds of this sub-agency is peace, good feeling, and harmony.

I have the honor to be your most obedient servant.

JAMES S. RAINES.
Neosho Sub-agent.

Captain WILLIAM ARMSTRONG,
Acting Superintendent Western Territory.

No. 20.

SEMINOLE SUB-AGENCY, *September* 30, 1845.

SIR: It becomes my duty, under the regulations of the War Department, to make an "annual report" of the state of the tribe for which I have been appointed sub-agent: but from the short period which has elapsed since entering upon the duties of the office, it is out of my power to do more than to give a general idea of their condition, and the suitability of the country to their mode of life.

Having removed to their present homes but last spring, they are still laboring under the inconveniences and hardships usually incident to emigration, with the gloomy prospect in the future of suffering and want. For the present, and a few months to come, they will receive partial relief from the issuance of rations and the payment for "property abandoned in the east." This, however, is but a temporary relief; the money about being paid out ($13,000) will barely pay the debts which they have been obliged to contract, (which are contracted on the credit of said payment) and pro-

vide such articles as are indispensably necessary to protect their persons from the winter's blast.

The lateness of the season in which they removed, under the most favorable auspices, would have prevented them from making a sufficiency of corn to subsist upon "until roasting-ear time" next year; and when we take into consideration the past season—the unprecedented drought—it will be apparent to any man that it was utterly impossible they could raise even enough breadstuff to feed them a longer period than two or three months; and now, although rations are regularly issued under the prompt and careful superintendence of Colonel G. C. Matlock, yet they have used a great portion of their own crops, owing, not to a careless or wasteful disposition, but to the fact that they, as all Indians, use and require more corn than is allowed to a ration for a white man; and for this reason I am inclined to the opinion they would do better with more corn and less meat than as under the customary or established regulation.

After undergoing all the hardships of a protracted war in Florida, brought to this country in a destitute condition, and put down without a home over which they could have control, it cannot be a matter of surprise that they have not accumulated a stock of cattle to take with them to their new homes. To be sure they have had cattle issued to them on their feet, (alive,) but only the amount of rations which they were entitled to, and was required for their subsistence at the time.

It is somewhat unfortunate that the issuance of rations and payment of this money should take place at the same time. Had the money been paid *now*, and the issuing of rations postponed until next spring and summer, they could have got through their difficulties much easier; but this arrangement could only be made by consent of the contractor for furnishing provisions, which, however, was declined, when consulted on the subject by Major Armstrong, acting superintendent, &c., who was very anxious, on account of the Indians, to have it so arranged. Thus it will be seen they will necessarily be in want after the expiration of the six months, unless something is done for their relief by those having the power to pass some remedial act.

The country to which they have been removed, as far as I have seen, is well suited to the culture of corn and other grain, and also for raising stock. It is principally prairie land, with sufficient timber, however, for all their wants. There are fine bodies of tillable land, well timbered, lying on the rivers and creeks; but the great detriment of the country is the scarcity of good water.

The Indians have generally settled near the creeks, (making their fields on the bottom land,) in "towns," some few miles distant from each other.

Many of the Seminoles are still remaining among the Creeks, and some few among the Cherokees. Those among the Creeks are on or near North fork of Canadian, about 50 miles from Little river—on Deep fork, about 60 miles, and on Elm creek, about 75 miles—many of whom probably will remove hereafter. The great body are about 8 miles north from Little river, where they have lately finished their council house, and may be considered a permanent location. They have made considerable improvements, clearing fields for next year's crop, and making cabins, &c., to shelter them during the coming winter.

They say the country is almost destitute of "game," and that the promises of government, in their treaty in Florida, "to give them a country in exchange better adapted to their habits of life," have not been carried out in this as in other respects, being much colder, and where their necessities are greatly increased; and it is on this account they claim more consideration from our government.

The agency has been located about two and a half miles southeast of the council house, where also I have directed, by the request of the Indians, the blacksmith to put up his shop.

The Seminoles, under all the circumstances, it cannot be denied, are much better situated and contented than they have heretofore been since their removal west of the Mississippi.

On the subject of education among the Seminoles, little can be said; for, as far as my knowledge goes, there is little or no interest taken about it.

It is hardly necessary for me to say any thing on the "whiskey trade;" being among the Seminoles, as amongst most of the Indians on this frontier, the source of nearly all the mischief which takes place; gradually wearing away the substance of the Indian, and effecting slowly, but certainly, their ruin, and the extirpation of their race.

Respectfully, &c.

M. DUVAL,
Seminole Sub-agent.

Hon. T. HARTLEY CRAWFORD,
Commissioner Indian Affairs, Washington, D. C.

No. 21.

OFFICE SUPERINTENDENT OF INDIAN AFFAIRS,
St. Louis, September 10, 1845.

SIR: In making my annual report for the present year, I shall confine myself principally to matters that have come under my own observation, and to such general information as I have been enabled to obtain dur the past year.

The seasonable provision so liberally made by you for furnishing the destitute Indians with corn during the last winter, to supply the failure of their crops occasioned by the heavy rains of May and June, 1844, afforded a very timely relief; but for it, their sufferings must have been extreme. The relief thus furnished, I have reason to believe, has had the effect of increasing the confidence of the Indians in the benevolent feelings of the government towards them. This humane act has not had the effect of causing an improper reliance upon the government for support; on the contrary, much greater efforts have been made this year than usual to raise a sufficiency of bread-stuffs, and I am gratified to know from personal observation in many instances that their efforts have been attended with a certain prospect of a full harvest of corn: most of the tribes, it is said, will have a surplus of corn. I regret, however, to learn that the Indians on the Osage, embracing parts of the Pottawatomies, Chippewas, Ottowas, and Weas, have again had their crops destroyed by the

nished with a report of this school by the Rev. Samuel G. Patterson; it is herewith enclosed, and marked A. The number of Quapaws will prove considerably greater this year than the last, as many of their Red river brethren have come and settled themselves with them here.

The Senecas have been very sickly during the last year, and many of them have died. There is no other visible change among them since my last report.

The mixed band of Senecas and Shawnees have been generally healthy, although they live so near the Senecas. I know of no alteration whatever among this tribe since my last report. They have had good crops growing, and will raise a plenty to live on the present year.

The smiths among all these tribes keep them supplied with every necessary tool to work with.

Every thing within the bounds of this sub-agency appears to be peace, harmony, and good-will; not the slightest interruption pervades the country to my knowledge.

I have the honor to be your most obedient servant,

JAMES S. RAINS,
Neosho Indian Sub-agent.

Maj WILLIAM ARMSTRONG,
Superintendent of Indian Affairs, Choctaw Agency.

No. 14.

WASHINGTON, D. C., *October* 15, 1846.

SIR: Under the regulations of the Department, it is my duty to report to you the condition of the tribe committed to my charge. In pursuance of which I herewith make known:

That, since my report of last year, nothing has occurred to disturb the peaceful relations of the Seminoles with the United States, or with any of the surrounding tribes. And although conflict of interests between the Seminoles and Creeks was anticipated, and provided for by the commissioners who made the late treaty, I am happy to say nothing has occurred which required *even a reference* to the United States authority.

They appear to be satisfied in being guarantied by the treaty to have the right of self-government, so far as relates to their "town laws," &c. willingly acknowledging the supremacy of the Creek "general council."

The tribe is divided into twenty-five "towns," or bands. Last year there were twenty-seven; but two of them having lost their headmen, have attached themselves to other bands. Each town has its own governor, or headman, "town laws," &c.—the general council of the Seminoles having a supervisory control over all the towns; in which council a majority of the headmen, with the approbation of the governor, or king, are competent to pass laws for the government of the whole people, provided they do not conflict with the laws of the "Creek general council."

Micco-nuppe is the Seminole king, or governor; Cowoch Coochee, or Wild Cat, his "counsellor and organ," who has to assist him in determining what the king *ought to do;* and five other chiefs—to wit: Tusse Krul Octi-archee, Pascofar, Echo-emathla, and Passuckee-yoholo—who may be called the executive council.

The greater number of the Seminoles live between the North fork of Canadian and Little river, on the north of the main Canadian; their territory is mostly prairie land, with, however, a sufficient quantity of timber for all the purposes of many times their number. A large proportion of the land is good, and well adapted to the culture of all kinds of grain; and for stock-raising it is unsurpassed by any portion of the Indian territory I have seen.

The climate is variable, and the bleak blasts of winter, driving across those prairies, are peculiarly severe on the Seminole, coming from so genial a climate as Florida; where such a thing as a snow storm, they say, never was seen. Last winter was one of the severest ever experienced in the west; and the "big frosts" which were sent by the "Great Spirit," caused much suffering, and not a little grumbling among them, and induced many to deny the words and doubt the wisdom of their "Great Father," who "promised them in exchange for Florida, a country better suited to their habits of life," &c.

Another source of discontent among them was the want of provisions. They had removed too late in the spring to raise any considerable quantity of corn, and by the provisions of the treaty they were subsisted only six months, which ended in January; from which time until in May, (when I procured corn for them on the credit of their annuity,) many of them suffered immensely. Although the hardships of last winter may ultimately be of benefit to them; yet it was an ordeal through which, to pass, however serviceable to future results, any of us would have murmured at.

As a body, the Seminoles are, like the Creeks, an agricultural people—their principal subsistence being corn and vegetables. There have been among them the past year some, whom I am aware of, living solely by the "hunt." Every man has his rifle, but he looks to the earth for his subsistence; and the proceeds of a hunt are for the purposes of trade with the merchants. How long this will continue I cannot say, but think, hereafter, there will be many who will depend, like the roving Delaware, altogether on the hunt.

Wild Cat and several of his men, after his return from the Comanche country, where he had been with Commissioners Butler and Lewis, went out on an "exploring hunt." Since which, probably 250 men under him (Wild Cat) and other "headmen," have gone out, intending to remain several months. They, before leaving, got a considerable quantity of merchandise to trade to the Prairie Indians, to buy peltries, &c., with which they are to extinguish their home debt; and it much depends upon the success of this first party whether many engage in the chase (and traffic combined) for their future support.

On the Canadian, at different points, from 5 to 20 miles distant from my agency, are located several bands of Delawares, Shawnees, Qua-saw-das, and Kickapoos—numbering in all about 200 men—who rely solely on hunting and trading with the wild Indians for a living. Their women and children are generally left at their towns to make a little corn, &c., for themselves, while the hunters are out; which is generally from September to April or May. These bands have been there for several years, and are uniformly friendly—not only with our border tribes, but with the whites also; and, indeed, are looked upon by the Creeks and others as a protection from the incursions of the Prairie Indians. They are allowed, I believe, no other privileges than the location as a home; and nothing is expected in return but their friendship and assistance, if necessary, against

roving parties. I refer to these bands and their character (although many of them are beyond my agency, over the Canadian) merely as information to the Department; and, as being the nearest government officer, it might be expected I should have an eye to them.

The Seminoles yet remaining in Florida are the subject of considerable solicitude to their western brethren. They desire them to remove, and would assist in persuading them to do so, being convinced that they would be better off united to their tribe, than isolated as they are; and, if it is the intention or desire of the government ever to remove them, I believe the plan proposed by me to the Department, with the concurrence of the western Seminoles, would best effect that object; and I hope, therefore, it may be acted on.

The Seminoles at this time, I am confident, are disposed to be quiet and as friendly as most of the Indians on our frontier; and have had experience sufficient to learn them it is to their interests to be so. If there has been any one thing more than another which tended to change their views about the United States, it was the visit of Wild Cat and delegation to this city two years since. They then, for the first time, had the least conception of the strength of our government; as they certainly did not learn it in the Florida war. The effect of which was rather to raise them in their own, as it did in the estimation of other tribes, as "braves and warriors," than to break their spirit as a nation. These are facts given to the Department that it may view, in a proper light, the feelings of the Seminoles. The real desire of peace and rest, and their own interests pecuniarily, rather than a want of the spirit of resistance, induces them to keep order. In giving this opinion—living in the country, and having advantages which enable me to speak understandingly—I hope I may be excused by certain demagogues, who have no larger "hobby" to ride themselves into notice on than frightening old women and weak-minded men by their continual cries about the "defenceless frontier;" the "embittered and ruthless *Seminole*, just removed from the swamps of Florida, burning with all the *vengeful spirit* of the Indian," &c.; making "capital" for *themselves*, by "banking" upon the credulity of the ignorant.

That *bane* of the Indian, whiskey, continues to be carried up into the nation, and will in despite all the efforts to put a stop to it under the existing law. To effect anything like a cure of the evil, it is indispensable to have the co-operation of the Indian authorities themselves; but, when a tribe have not become sufficiently civilized to feel a moral restraint, it is out of the question to expect co-operation in putting down a moral evil; and I therefore think that it should be made to the interest of a certain body of Indians to capture whiskey, by giving them something in return for all they should capture and deliver to the United States authority; or, instead of destroying it, have it conveyed below the line and sold, and the amount above the necessary expenses paid to the individual capturing.

Of the progress of education among the Seminoles, but little can be said, as they neither have nor want a school; and I am satisfied that they would be improved by a school conducted only on the manual labor principle. Education itself holds out no inducement *to them;* and, therefore, it is necessary to adopt some plan by which the children will be provided for temporally, when the advance of the mind will be a consequent of their temporal improvement. This institution should be in the Seminole or Creek country—the former, if there are funds sufficient to have one dis-

tinct from the Creeks. Thus located, where the mother could see that her child was taken care of without trouble *to her*, it would occasion at first but little, and shortly no opposition. A distinct school would be preferable on account of the feeling which would soon grow up in its favor as the Seminole school; but if the funds for Seminole education are not sufficient, it would then be advisable to add them to the Creek fund, with the privilege of sending a certain number of Seminole boys. As to little "cornfield schools," it would be next thing to throwing money away; and to take them off entirely among the whites would be, in my opinion, worse; and, moreover, would not be consented to by the Indians.

The crops of the present year are generally good; and the Indians having opened and worked a considerable quantity of land, the yield will be sufficient for all their wants until next season. Some few individuals have their own fields separate and apart from the "town field"—each "town" having one in common for all of the land.

The products are corn, sweet potatoes, rice, beans, and ground-nuts or goober peas.

Their cabins are much better than those they have heretofore lived in, although nothing to brag on, and furnished, not with "articles too numerous to mention," but such only as are absolutely necessary—a stool or two, pestle and mortar, "hominy baskets," two or three pots or kettles, with "sofky" spoons, and a beef hide in the corner, which serves as a bed.

The issue of agricultural implements (provided for in late treaty) instead of money, is much better for the Seminoles, and has, so far, given satisfaction. I deem it proper here to record my present opinion in regard to paying Indians their annuity partly in goods. Where the Indians have advanced no farther towards civilization than the Seminoles, I (contrary to the expressed opinion of most Indian agents) believe that it is decidedly to their benefit to receive a part in goods—receiving nearly double the amount from government which they would were the money expended by individuals in the Indian country for the same purpose; and it is further advisable, for the reason that, if the money were paid to them, there is at least two chances to one that the greater part would be spent for whiskey.

Since my last report, payment has been made for abandoned "improvements" in Florida to the amount of $12,600; and it is worthy of remark in this place, to say, to the credit of the Seminoles, that although there was no law to force them, or even influence used, they immediately and willingly paid all the debts which they had contracted and given "papers" for, taking nearly the whole amount turned over: showing an example of honesty to their *more civilized brothers*, (red and white,) which is well worthy of imitation.

If the Seminoles have any religion, I am not aware of it. I have not seen it; and I incline to the opinion that all their views on the subject may be expressed in the following words: "Live as you please, but die brave;" for, let death come in any form, only give them a chance to speak beforehand, and it will be "I'm a man and a warrior, and not afraid to die."

From the foregoing, you may judge *how far* the Seminoles have advanced in civilization; and, although I cannot discover the "rapid advances" which have been reported by predecessors, I am confident they have not retrograded; and equally certain that a long time must elapse, requiring the exertion and perseverance of the philanthropist, assisted by the fostering care of our government, before the Seminoles will be as far advanced

as what many of their red brethren now are. If, however, one were to judge of the condition of the various tribes by some of the "reports" given each year, commencing about fifteen years back, and read them in order, he would arrive at the conclusion that, at this time, the Indians were certainly on a footing with, if not superior to, the whites in improvement; but the payment of debts to merchants and others by the Seminoles, without the force of law, (referred to above,) would of itself debar *them* from claiming any degree of advancement in civilization.

Accompanying this report, I give you such statistics of the Seminoles as it is at present in my power to present.

I have the honor to be, very respectfully, your obedient servant,

M. DUVAL,
Seminole Sub-agent.

Hon. WILLIAM MEDILL,
Commissioner of Indian Affairs, Washington, D. C.

No. 15.

OFFICE SUPERINTENDENT INDIAN AFFAIRS,
St. Louis, September 5, 1846.

SIR: In making this, my annual report, I shall necessarily have to confine myself in a great degree to some general observations, as no reports from the agents and sub-agents have yet been received.

During the last fall, the border tribes of Indians suffered severely from autumnal fevers, which prevailed to an unusual degree in the west: these fevers, in the hands of the physicians, readily yield to medical treatment; and, indeed, with the grand specific, quinine, at command, persons of ordinary intelligence, in the absence of the physician, manage them with a good deal of success; but in the absence of medical treatment, and with the poor and imprudent diet and irregular habits of the Indians, the fever often proves distressingly fatal, as was the case last fall with different tribes. An annual fund of six hundred dollars, if placed in the hands of the superintendent at St. Louis, to be invested in medicines and distributed to such persons among the different tribes as he might select to administer them to the Indians, would no doubt save much suffering and life.

With the exception of a few localities, the corn crop among the Indians last year was very abundant; several tribes raising a considerable surplus.

I have been gratified, from personal observation, to witness the rapid improvements among many of the tribes in agriculture and the general conveniences and comforts of life. The tribes among which these improvements are most visible are the Shawnees, Wyandots, Delawares, Kickapoos, Munsees, Stockbridges, Ottowas, and Pottawatomies of the Osages. The improvements among these people are, to my mind, evidently attributable to the happy influence exercised over them by their missionaries with their schools.

The school among the Iowas, under the direction of the Presbyterian mission, is now about to go into operation upon an extensive scale; the missionaries have the confidence of the Indians, and I shall look, with I think well-founded expectations, for successful results. The party of Iowas that went to Europe in 1844, under the conduct of Mr. Melody, re-

turned last fall evidently with impressions favorable to the adoption of the habits of the whites. Mr. Melody is entitled to much credit for the care which he took of them, in keeping them from places of vice, and placing them in positions where impressions are likely to be made in favor of Christianity and civilization.

The Methodist Episcopal Church has established a school among the Kanzas Indians, and as additional provision has been made by their late treaty for education, it is hoped that the school, with the missionary efforts, may do much for the improvement of these poor, degraded, yet docile people. The schools mentioned in my last report are progressing with favorable results.

The efforts of the government agents, seconded by the traders, have up to this time proved unsuccessful in keeping spirituous liquors out of the Indian country; it is brought in by the Indians and obtained from persons who keep it especially for them, just within the State line. The laws of the State have hitherto been ineffectual in suppressing this traffic. It is, I fear, only to be effected by the moral improvement of the Indians. We must look to the missionary and the schoolmaster as the most reliable means of effecting the improvement.

The school among the Pawnees was interrupted during the present summer by a large party of Sioux, who visited the village during the absence of the Pawnees on their summer hunt, committed depredations upon the property of the whites, and burned the Pawnee village. The Pawnee children who remained at school, were concealed in time by the whites by placing them in the cellars, otherwise they would have all been murdered. After the Sioux had retired, the whites evacuated the place and came to Bellevue, bringing with them the children, where I presume they will remain until the return of the Pawnees to their burnt village.

The Pawnees have a considerable fund for education and farming, which, if placed in the hands of the Presbyterian Missionary Society, (at the head of which is the Rev. Mr. Green, of Boston,) who have a mission among them, under such regulations as the Department might see fit to adopt for the establishing of a manual labor school, I believe that much might be done for their improvement. The farming operations among them by the government I consider a failure. I have no doubt they would receive much more grain from a manual labor farm in the hands of the missionary than they now do, besides the advantage of having their children taken care of and taught to work. The consent of the Pawnees would be necessary to effect the arrangement.

Not much, however, can be done for the Pawnees in the way of improving their condition until they are protected at home from their ruthless foes the Sioux. It is greatly to be hoped that the line of posts contemplated to be established from Missouri to the mountains, will tend to preserve peace between the different tribes.

I have suggested, in a former annual communication, the advantages that would result to the Indians in holding a general council, under the direction of the government, at some designated point, for the purpose of inducing them to enter into treaties of peace and friendship. A treaty of this kind was made by a large number of tribes in November, 1833, at Fort Leavenworth, under the direction of Mr. Ellsworth, and I am informed that its conditions were observed and respected for years. The simple circumstance of bringing them together in a friendly way, would have a good

THE

ORIGIN, PROGRESS, AND CONCLUSION

OF THE

FLORIDA WAR;

TO WHICH IS APPENDED

A RECORD OF OFFICERS, NON-COMMISSIONED OFFICERS, MUSICIANS, AND PRIVATES OF THE U. S. ARMY, NAVY, AND MARINE CORPS,

WHO WERE KILLED IN BATTLE OR DIED OF DISEASE.

AS ALSO THE NAMES OF

OFFICERS WHO WERE DISTINGUISHED BY BREVETS, AND THE NAMES OF OTHERS RECOMMENDED.

TOGETHER WITH THE

ORDERS FOR COLLECTING THE REMAINS OF THE DEAD IN FLORIDA, AND THE CEREMONY OF INTERMENT AT ST. AUGUSTINE, EAST FLORIDA, ON THE FOURTEENTH DAY OF AUGUST, 1842.

BY

JOHN T. SPRAGUE,

BREVET CAPTAIN, EIGHTH REGIMENT U. S. INFANTRY.

NEW-YORK:
D. APPLETON & COMPANY, 200 BROADWAY.
PHILADELPHIA:
GEO. S. APPLETON, 148 CHESNUT-STREET.
M DCCC XLVIII.

borhood, the band resided; and in co-operation with the Seminoles and Mickasukies, participated in the depredations committed throughout the territory. Having deserted their own country, they saw the necessity of taking decided measures to defend this last foothold, and of encouraging those who were already in open hostilities to energy and activity, fearful that their subjection might involve their own destruction. Messengers were at once dispatched to the various chiefs occupying the country, tendering a hearty co-operation in numbers, as well as a supply of powder and lead. The pipe of peace was sent, which was to extinguish the fire of discord and revenge, ignited thirty years before; but which, from their wide separation, had been smouldering to the present time. To find themselves suppliants upon the land of the Seminoles, a tribe driven by their ancestors from the soil they had just forsaken, and compelled to ask for their co-operation and aid, was a humiliation which nothing but a consciousness of feebleness would have warranted their chieftain in submitting to. Octiarche openly and fearlessly advocated the most vigorous measures of defence, if it became necessary; but urged the policy of remaining quiet within their haunts, if unmolested. Necessity, however, had compelled him to head war-parties in self-defence. In this manner the Creeks, for three years past, had the direction of the contest in their own hands. The tall, commanding figure of Octiarche had been often seen by the officers of the army in various encounters; and his loud voice was heard to resound through the hammock and swamp, nerving many a faltering heart to the combat. He was usually distinguished by one side of his face being painted black, the other scarlet, and his bare breast variegated with colors. In action, he was bold and dauntless; in council, reflective and dispassionate. Among his companions, enterprising and resolute, commanding within his band perfect obedience; exercising a salutary influence by his integrity, consistency, and sobriety. Had he been permitted to have remained in Florida, he would doubtless have been a firm friend to the citizens; but the antipathy of the Seminoles, and the struggles between himself and Holatter-Micco (Bowlegs) for ascendency, would have caused constant feuds, and resulted in bloodshed among themselves, in which the border-settlers would have been soon involved.

Florida was free from the most inveterate of her foes, those who had been considered both by whites and Seminole Indians, as intruders. The military force was reduced in all respects to the regular establishment. On the 24th of March, companies C and F, 7th infantry, at Fort Brooke, embarked for Baton Rouge, Louisiana. The 3d infantry, commanded by Lieutenant-Colonel Hitchcock, at Fort Stansbury, took shipping at Port Leon on the

5th of April for New-Orleans; thence to Jefferson Barracks, Missouri, nine miles below St. Louis. The 8th regiment of the U. S. infantry constituted the regular force remaining in Florida, so posted as to keep in check the Indians, and, if necessary, give adequate protection to the settlements. The Indians lived within the boundary temporarily assigned them, and were permitted to frequent Fort Brooke for the purpose of trade. Idle reports were constantly in circulation of their contemplating, or having made, hostile movements. These were fabricated and industriously promulgated by the lazy and profligate, who saw with regret the approaching closure of the war, and who had artfully and covertly interposed every obstacle to its termination.

The following extract from General Worth's report to the adjutant-general, gives clearly the state of things at this period; and which has continued, with but slight alteration, to the present time.

"*Head-quarters, 9th Military Department,*
St. Augustine, Fa., Nov. 17, 1843.

"Sir—In compliance with your instructions of September 28th, the following statement of Indians remaining in Florida is submitted, viz.: of warriors, Seminoles, forty-two; Micksukies, thirty-three; Creeks, ten; Tallahassees, ten—ninety-five—including women and children, three hundred. Holatter-Micco (Billy Bowlegs), nephew of Micanopy, is the acknowledged chief; Assinwar, Otulke-Thlocko (the Prophet), sub-chiefs. The foregoing has been obtained from many Indians at different times during the past year; and it is believed to be correct—quite as likely above as below the real number. As yet, few have manifested a disposition to emigrate; and the time has not arrived to effect their removal by coercive measures, as they are somewhat shy and distrustful of the whites. All have visited Fort Brooke, except a few of the very aged; but in parties of ten or fifteen only. These apprehensions, under the policy pursued, will soon wear away, when, if considered desirable, advantage may be taken of a favorable occasion to send off the whole: precipitancy will occasion much and vexatious difficulty—when done, it must be thoroughly and effectually done; for if ten of these warriors remained, maddened to a spirit of hostility, they would suffice to break up and scatter the entire line of new settlements, although tenfold their numbers.

"Since the pacification of August 14th, 1842, these people have observed perfect good faith, and strictly fulfilled their engagements; not an instance of rudeness towards the whites has yet occurred. They plant and hunt diligently; and take their game and skins to the trading establishment or Fort Brooke,

foregoing views. As there are many points of detail connected therewith which would be inconvenient to embody in this report, as also the submission of some explanatory maps, I have deemed it of sufficient importance, and also that I may be more promptly and clearly advised of the views of the major-general commanding-in-chief, to dispatch Major Cooper, chief of the staff, to general head-quarters. That officer is fully possessed of my views and reflections upon the subject; and I request that entire confidence may be given to any statements he may make in relation thereto, and that, after executing this duty, he may be permitted to join me without delay.

"Treating of matters other than of military detail, I have taken the liberty, which I hope will be excused, of addressing this direct to the general commanding-in-chief.

I have the honor to be, very respectfully,
Your obedient servant,

Maj. Gen. WINFIELD SCOTT, Commanding-in-Chief, Head-quarters, *Washington*. } W. J. WORTH, *Colonel Commanding*.

Statement of Indians in Florida accompanying Colonel Worth's letter of February 14th, 1842.

	Warriors.	Women and Children.	Total.	
Sam Jones's band; supposed to be about the head-waters of the Locha Hatchee, thence south.	15	31	46	Mostly Mickasukies. Some Seminoles.
The Prophet's, including Bowlegs'; supposed to be in the direction of the Mangrove Lake, south near Key Biscayne.	13	24	37	All Creeks but 10.
Assinawau, including Chitto-Tustenuggee's, and several straggling Indians; supposed to be on or about the Kissimmee.	20	10	68	Seminoles; communication has been had with this party, and they will doubtless be with us in a few days.
Halleck-Tustenuggee; ranging in the direction of How Creek and Tomatka, thence south.	12	20	32	Mickasukies.
Powis Cockochopco; range the same, and associated with Halleck.	6	4	10	Creeks.
The two Ostenches; between the Suwannee and the Withlacoochee.	20	27	47	Creeks.
Hothle Peyce Tustenugee, including Chitto, Hadjo, and Halpatter Tustenuggee; range in the hammocks of the Estern Hatchee.	19	30	49	In equal numbers. Creeks, Tallahassees, and Mickasukies.
Oze-ce-os; range in the hammocks of the Oklockonnee.	7	13	20	Creeks.
	112	189	301	

"Of the above there are 120 Creeks, including 45 Creek warriors, dispersed among the several bands who were not a party to the original contest.

"From close examination, at different times, of Indians in possession, generally agreeing in results, and from information obtained from various other sources, the above table has been formed, showing the whole number of Indians remaining out. In the examinations there has been a singular coincidence of statement, but where there was a discrepancy, the highest number has been taken in forming the table.

W. J. W., *Commanding, &c.*"

This letter made a crisis in the Florida war. Some thought it a compromise of the honor of the nation, and of the gallantry of the army. The contest, it was said, had been commenced, and should be persevered in, so as to vindicate the potency and efficiency of our arms, and to illustrate the blessings of a bountiful treasury. This had already lavished millions, without obtaining either glory for the military, or satisfying the expectations and demands of the people, whose condition only became more critical and embarrassed, as money was appropriated and expended. Major Samuel Cooper, assistant-adjutant-general, was dispatched to Washington City, to submit this communication to the commander-in-chief. It was referred to the secretary of war, the Honorable J. C. Spencer, and by him laid before a council of officers of rank, who did not deem the measures proposed as politic, expedient, or judicious. Major-General Jesup, a member of the council, alone dissented. His experience in Florida gave abundant proofs of the necessity of the course recommended, as the only efficient method by which the conflict could be successfully closed. The suggestions, as submitted, were nevertheless carried out, and how far they were conceived in wisdom, policy, and justice, subsequent events must show, and the results speak for themselves.

Orders were issued laying out the ground of retrenchment, bringing the means for military operations within a compass corresponding with the object in view. Order No. 4 comprehends the general plan of reduction.

Order No. 4. "*Head-Quarters, Army of Florida, Palatka*, March 6th, 1842.

"I. All public horses, other than those hereafter enumerated, will be forthwith turned in to the quartermaster's department, to be disposed of as Lieutenant-Colonel Whiting shall direct.

"II. For the purpose of expresses, and occasionally to mount troops, under orders of commanding officers, but to be habitually

procure the necessaries they desire, and return quietly to their grounds.

W. J. WORTH,
Brigadier-General commanding."

Peace was at last granted to suffering Florida, which for seven years had been the scene of rapine and murder. The inhabitants had been driven from their homes, and many had seen their families massacred by the light of their burning dwellings. Industry and enterprise had forsaken the land; and the savage roamed triumphant in the midst of devastation, poverty, and sorrow.

A letter, recently published by the officer left in charge of Indian affairs in the state, on General Worth's departure for the new seat of war, gives a detail of the relations now existing between the whites and Indians, as well as the recent action of the president of the United States in adding twenty additional miles in breadth to the boundary defined by General Worth in his arrangement with the Indians, on the 14th of August, 1842.

"*Fort Brooke, Tampa Bay, Fa.*, Sept. 16, 1845.

"SIR—In passing through the interior of the country, I found much interest manifested in reference to the relation now existing between the settlers and the Indians remaining within the limits of the state. The withdrawal of the troops to more active duty, renders it necessary that a perfect understanding should exist, to continue the friendly intercourse which for three years past has given confidence and security, in all respects, to the most remote settlers on the frontier. The number of Indians in Florida, does not exceed one hundred men capable of bearing arms. The *temporary* arrangement made with them by General Worth, in August, 1842, permitted them to plant and hunt within a boundary thus defined:

"'From the mouth of Pense Creek up the left bank of that stream to the fork of the southern branch, and following that branch to the head or northern edge of Lake Istokpoga; thence down the eastern margin of that lake to the stream which empties from it into the Kissimmee river, following the left bank of said stream and river to where the latter empties into Lake Oke-chobee; thence due south through said lake and the Everglades to Shark river, following the right bank of that river to the Gulf, thence along the Gulf shore to the place of beginning, excluding all islands lying between Santa Rosa and the head of Charlotte Harbor. Within the boundaries herein described, no settlement can with safety or propriety be formed; any person in making settlement within those limits, will be subject to removal. The

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foregoing temporary arrangement being in conformity with the instructions of the president of the United States.'

"On the 19th of May last, the president of the United States directed that a strip of the public lands, twenty miles in width, around the district set apart for the use and occupancy of the Seminoles in Florida, should be reserved from survey and sale; and the necessary instructions (says the communication from the commissioner of the general land-office) were this day (20th of May, 1845,) sent to the surveyor-general of Florida, and the land-offices at St. Augustine and Newnansville, in Florida.

"As near as this boundary can be defined, without actual survey, it can be traced on the map of Florida published in 1839 by order of General Taylor: commencing at the north point of Boca Gasparilla, on the Gulf coast; thence northwest to within five miles of Fort Gardner; thence southeast to the head of Cypress Swamp; thence south, *via* Fort Lloyd, to the southern extremity of the Peninsula, terminating in Barnes's Sound. These points have been given to the Indians, within which they must confine themselves for all purposes—conditioned, clearly explained and understood, upon their cultivating at all times and under all circumstances, a friendly feeling with the whites. To this they have adhered, ever since the first boundary was defined, with the most scrupulous fidelity. So far as their acts and feelings are concerned, this can be continued without detriment to the public good, or the sacrifice of principle or of honor.

"The citizens of the state and those now exploring it with a view of settlement, numerous as they are, hold their destiny in their own hands. If in the prosecution of these designs, they by the most trifling or thoughtless act induce the Indians to shun them, or lead them to believe that that protection given them three years past is withdrawn, the life and property of every settler is jeopardized; and the country will ere long again become the scene of rapine, desolation, and distress. One hostile act, from timidity or imprudence, inducing the Indian to shun the white man, or the white man the Indian in the woods, will be sufficient to make a breach, widening from day to day, until both parties become arrayed in open hostility. At present, no danger need be apprehended from the Indians; but there is material within themselves, and vicious influences enough without, to inflame their passions to violent and overt acts.

"Upon this, as upon all Indian borders, there is a class of men destitute of property and employment, who for excitement and gain, would recklessly provoke the Indian to aggressions, and in the midst of which, escape detection and punishment, leaving the burden to fall upon the honest and industrious. The Indians are incapable of drawing a line of distinction in the character

and conduct of whites; and are as ready to believe the idle tales and threats of the vicious and degraded, as they are at all times disposed to rely upon the assurances given them by the officers of government. The fabrication of reports and stories, though divested of the least probability, gradually and effectually alienates their feelings until the spirit of retaliation is abroad, resulting in collisions and bloodshed. The hardy and industrious settler, who by frugality and prudence has accumulated around him a competency, is induced to abandon his cultivated fields from fear of an enemy, made strong by their limited numbers and mode of warfare, assailing his defenceless home at a moment when individual exertion avails but little in protecting a wife and children.

"It then becomes the duty of every citizen, looking to his own security and the prosperity of the state, to eradicate the spirit of recrimination actuating so many toward the Indian; and by example and advice put down, either by exposure or intimidation, those who would by any means, however remote, destroy the harmony and security now guarantied to the settlements along the frontier. A wholesome state of public feeling can alone continue it. Policy and prudence for the general good, should overcome the lurking spirit of retaliation so natural and just among a people who for years have been smarting under atrocious deeds, carrying sorrow, poverty, and want, into almost every household in the land. If this enemy could be crushed, annihilated, there would be enough to participate; but as they are, ninety may be secured, and the remaining ten would sweep the frontier from one extent to the other, assailing at any moment men, women, and children, in the prosecution of their daily occupations.

"The Indians within the boundary are remnants of the Seminole, Mickasukie, Creek, and Uchee tribes, driven there by military force, and continued there in peace through the instrumentality of the officers of the government. A number of them have risen from boyhood to manhood since the commencement of the Florida contest—bred to war; and nothing but the zealous and judicious policy adopted, has deterred them from the committal of atrocious acts, familiar from childhood. The advice and example of the chiefs and sub-chiefs, more advanced in life, has been salutary; and will continue so, if unprovoked, until the time arrives when the measures now in progress will induce them to leave the country. Threats, provocations, hostilities, will deter more than advance emigration; ten thousand efficient troops, instead of expelling or exterminating, or even intimidating, would prolong difficulties and turn the cultivated fields of Florida into brambles, driving the Indian, after satiating his appetite upon

the innocent and unprotected, into adjoining states, where, in revenge, their activity and brutality would be redoubled.

"It is the policy of the general government to remove these remnants of bands to Arkansas by the only means which can effectually accomplish it. First, to locate them where they can be found and numbered: let them enjoy the comforts of peace, which will subdue the instinctive love for blood and plunder, when they can be approached through kindness and regard to their wants, which in time tames their habits and suspicions, and induces them to consider the government and its agents as friends, interested in their welfare and happiness. Then emigration can be successfully urged, and enforced by quiet and conciliatory measures: they will see that the encroachment of whites, and their settlements, subject them constantly and unavoidably to feuds and vexatious annoyances; whereas, in Arkansas, with relatives and friends, they can live in the enjoyment of their customs and habits. This must involve time, but it will effectually succeed; while a hostile attitude on the part of the government or citizens, will turn the country into an extended hunting-ground, existing so long as there remains a hostile Indian in the woods, or a settler comes, dependent upon his own arm and his family around him for defence.

"The withdrawal of the troops from Florida, has caused anxiety among the Indians for their own security. They have been told, that the government had abandoned its policy toward them; and left them to the inroads about to be commenced by the citizens, to drive them from the land. This, if a hostile feeling was predominant, would have been sufficient to provoke a corresponding feeling; on the contrary, they sought the officers of the government, in whom they had confidence, from three years' association, expressed their fears, and asked for protection —but, said they, 'if war is to come, we are prepared for it.'

"The Indians I have met here, return to their villages with renewed assurances on the part of government of protection, at the same time *advising* and admonishing them to think well of leaving the country, as the surest means whereby they can enjoy their homes, and follow uninterruptedly their vocations and habits.

"To prevent their passing through the settlements, a trading-house has been established at Charlotte's Harbor, one hundred miles south of this post, to which they can resort; where the agents of the government will meet them at certain periods, and enforce *judiciously* the necessity of emigration. The subject is now discussed among them; time and circumstances will remove the objections urged by the younger class, and many will be induced to emigrate.

"To carry this out successfully, the co-operation of public sentiment is necessary: if peace and emigration is urged in one quarter, aggression and bloodshed enacted in another, Florida will involve her destiny in that of the Indian.

"Peace with these bands of Indians now costs but little, without the sacrifice of blood, property, or homes; but hostilities will be at a higher price, without ameliorating the condition of the savage, or accomplishing the desired end.

I am, very respectfully, your obedient servant,

J. T. SPRAGUE,
Capt. U. S. A., in charge of Indian affairs, Fa

To the Editor of the St. Augustine Herald.

Very recent intercourse with the Indians remaining within the limits of the state, has enabled those upon whom the duty devolved, to ascertain correctly the number, and the disposition manifested in regard to peace and future emigration, as well as their present condition. There are now one hundred and twenty men capable of taking the field, consisting of fractions of various bands, viz.: Seminoles, 70; Mickasukies, 30; Creeks, 12; Uchees, 4; Choctaws, 4. Of this number, seventy have grown from boyhood to manhood since the commencement of the contest. The remainder do not exceed forty years of age, excepting Arpeika (Sam Jones), and Assinwar. The former is ninety-two years of age, the latter sixty. The women and children average two to a man, making two hundred and forty; of this number one hundred and forty are children. The total number of Indians, of both sexes, is three hundred and sixty. Holatter Micco, or Billy Bowlegs, is thirty-three years of age. He speaks English fluently, and exercises supreme control. He being the nephew of Micanopy, Old Bowlegs, and King Paine, his royal blood is regarded, thus enabling him to exert his authority in such a manner as to govern the reckless and wayward spirits around him. By judicious laws and periodical councils, he has instituted a system of government, salutary and efficient. Arpeika, or Sam Jones, is a sub-chief. This dignity is accorded to him in consideration of his age, more than for his opinions or assistance. He has become childish, and so feeble that he is dependent upon the young men and women for subsistence and care. Assinwar, another sub-chief, is a smart, active man. He gives a cordial support to the chief in his exertions to introduce wholesome laws, and to continue upon amicable terms with the inhabitants. Otulke-Thlocko (the Prophet), who so long held a commanding position, is dead. The perseverance of the troops, and their penetrating certain points when least expected, caused his advice and opinions to be treated with contempt, as his incantations and prophecies were

found to be impositions practised upon their ignorance and credulity. The Indian villages are located upon the Carlosahatchee river, extending from Charlotte's Harbor up to Lake Oke-chobee. The country, the larger portion of the year, is nearly inundated with water, so much so, that the Indians have been driven to the coast for safety. Game of all kinds abounds. The skins of the deer, when dressed, afford comfortable clothing; and the meat, when dried, is palatable and nourishing the year round. Bears are killed in great numbers. Oysters and fish are to be obtained in any quantities, at all seasons. They have horses, cattle, hogs, and some poultry. By planting a small lot of ground, they are enabled to raise corn and vegetables sufficient for consumption. Occasionally a few come in to Fort Brooke to trade, but they generally confine themselves to the trading-house within the boundary. Towards the whites an amicable feeling is entertained and encouraged, more from the apprehension of being encroached upon, than from any sentiment of generosity or affection.

In time, when the agents of the government have received their confidence, many will emigrate. Now they are shy and distrustful. If unmolested, they will be harmless. Forbearance and kindness, with the judicious policy of the general government now in operation, will relieve Florida entirely of Indians. Any steps to the contrary will again make it the battle-ground for the lion and the wolf.

No state or territory in the Union from which the Indian has been expelled, has had the good fortune to find so few of these natural enemies to civilization remaining in their midst, as the state of Florida. Other parts of the country have been annoyed with remnants of bands lingering about them, disgusting objects of compassion; but the Indians in Florida, from the prolific resources of the soil, and the deliciousness of the climate, so well adapted to their habits and wants, are placed far above the demands of charity or sympathy.

INDIAN REMOVAL

The Emigration of the Five Civilized Tribes of Indians

GRANT FOREMAN

Norman
UNIVERSITY OF OKLAHOMA PRESS

The Seminole heard with much alarm that it was planned to locate them in the Creek Nation as they feared the latter Indians intended to overwhelm them and take their negro slaves and allies; "they look upon us as runaways, and would treat us just as they would so many dogs."[21] As subsequent parties arrived they all settled around Fort Gibson until there were 2,000 of them stubbornly refusing to remove to the Creek country.

In the summer of 1838 Holahtochee, Coahadjo, and several other chiefs and warriors who had removed to the West were induced to return to Florida to exert such influence as they had with the Indians remaining there to emigrate. By September they had helped to collect at Tampa Bay about one hundred Tallahassee Indians who came in to negotiate with General Taylor.[22] In two months this number had increased to 200.[23]

Through the winter captives were slowly being assembled at Tampa Bay, and February 25, 1839, "*General Taylor shipped 196 Indians, consisting of warriors, women, children and negroes westward.*[24] *The women were very reluctant to go and upbraided the men with cowardice, in refusing to die upon their native soil. The vessel departed amid their lamentations and taunts, and reproaches upon the conduct of their warriors. Among the negroes is Abraham, well known as an interpreter and a wily and treacherous rascal.*"[25] In charge of Capt. Pitcairn Morrison the party ascended the Mississippi river in the steamboat *Buckeye* and passed Natchez March 28.[26] Later a boiler of the steamboat exploded and killed a number of the emigrants. The party arrived at Little Rock April 2, but because of low water the boat was compelled to remain here for some time. An observer said they appeared well fed and cheerful.[27]

21 Holahtochee and others to Jesup, September, 23 1838, OIA, "Florida Emigration," A 458.

22 *Ibid.*, Abercrombie to Poinsett, September 29, 1838; *Army and Navy Chronicle*, VII, 219.

23 *Ibid.*, 315.

24 *Ibid.*, X, 50.

25 *Ibid.*, VIII, 205.

26 *Natchez Free Trader*, March 29, 1839.

27 *Arkansas Gazette*, April 3, 1839, p. 2, col. 3; *Army and Navy Chronicle*, VII, 268.

tenacity and resourcefulness of the Indians who made the efforts of the army almost futile.[8] Through the whole summer the troops had discovered only a small part of the well concealed fields of the Indians and had destroyed 1,500 acres of their corn and pumpkins "and some hundred or two sheds were burnt (for they can hardly be called houses) but so far from being induced to come in and surrender themselves to our arms, few, very few Indians were seen and still less killed or captured."[9]

Every stream, and lake, and swamp abounded with good fish, game was plentiful, the coontie root for making their bread grew abundantly, and it was impossible to threaten the food supply of the Indians. The army had made such slight impression on them that the officers were in despair. The soldiers in their pale blue and white uniforms were conspicious at a distance, while the Indians often concealed themselves by standing stock-still in view of the enemy, their dark skin and soiled garments if any, giving them the appearance of a stump.[10]

The campaign of 1839 failed so signally that the governor and council of Florida sent to Cuba and purchased thirty-three bloodhounds that had been employed in the pursuit of negro slaves. When information of this new branch of the service against the Indians became known, indignant protests from over the country poured into Washington. The subject engaged the attention of Congress and the secretary of war sought to placate criticism by ordering that in the pursuit the dogs should not be allowed to attack the Indians. While General Taylor favored the use of the dogs, it was demonstrated that they were of little value.[11]

In preparation for the campaign of 1840 Capt. John Page prevailed on two of the principal Seminole chiefs, Holahtochee and Nocoseohola, twelve other Indian immigrants, and two interpreters to accompany him from Fort Gibson to Florida for the purpose of exerting their influence on the resident Indians to remove to the West. The parting from their families and friends on October 1, 1840, was an affecting scene. Holahtochee and other chiefs made parting addresses, and the old chief Alligator "formerly one of the most uncompromising, as well

8 *Ibid.*, 89.
9 *Ibid.*, XI, 220.
10 *Ibid.*
11 *Ibid.*, X, 114, 115, 117, 124, 135, 173, 187, 221, 239.

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9 *Ibid.*, XI, 220.
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11 *Ibid.*, X, 114, 115, 117, 124, 135, 173, 187, 221, 239.

as brave and successful among the emigrated Seminole warriors, then took the stand in behalf of the people (with whom he remains) and in an animated strain, conjured the members of the deputation to neglect no effort with their suffering brethren" to induce them to join the immigrants in the West. The party descended the Mississippi river and traveled from New Orleans aboard the ship *Harbinger*, arriving at Tampa Bay one month and two days after their departure from Fort Gibson. On this ship came also Maj. W. G. Belknap and four companies of the Third Infantry from Fort Smith.[12]

In October an expedition under Maj. Greenleaf Dearborn was ordered out. "*About forty miles distant an old women was met having sixteen sticks in her hand. She asked for sixteen days when some Indians would come in for a 'talk' . . .The sixteen days expired yesterday and the squaw returned saying that two chiefs and ten warriors were eight miles distant waiting to see the General. This morning the General* [Armistead] *took a troop of Dragoons and went out to hear what they had to say. . . 9 P. M. the General has returned after a 40 mile ride. He says he met Tiger Tail & Halec Tustenuggi & the warriors & that they say—here comes the old story 'he say him tired of the war—him want to fight no more.' The Gen'l says they seem to be really in earnest; they say their corn has been destroyed & their women are broke down with labor in preparing countiroot, that they are in a starving condition & can fight no longer—that the country is theirs & that we have no right to it; but that if we will not let them have a part of it, they must go. That they hope we will let them stay, but they will do as we say. . . The Genl. told them that he could give them no answer, but would write for instructions to Washington. In the meantime they have promised to come into Fort King with their families and to induce all of the others to come in. . . Whether this is to be a farce like all the other talks remains to be seen.*"[13]

Escorted by Capt. B. L. E. Bonneville[14] and his dragoons, General Armistead on November 7 joined the Arkansas delegation and a large

12 *Ibid.*, 329. Four more companies of this regiment marched from Fort Towson to Little Rock where they arrived on November 6; here they were embarked on the steamboat *Corvette* and two keel boats in tow for New Orleans (ibid., 362).

13 Maj. E. A. Hitchcock to Samuel Hitchcock, October 22, 1840, *Hitchcock Manuscripts*.

14 For accounts of Bonneville see Washington Irving, *Adventures of Captain Bonneville*; Grant Foreman, *Pioneer Days in the Early Southwest*.

number of troops near Fort King. Some of the Indians who came in to the camp loaded with venison reported the approach of Halek Tustenuggee and his band at Tampa Bay. They shook hands with the visiting delegation, "some of them coldly, others with smiles of recognition. The principal men from Arkansas then (all being seated) commenced talking & continued talking a long time."[15]

Gen. Walker K. Armistead with Col. William J. Worth and several other officers, escorted by a company of dragoons, went out to the camp of Halek Tustenuggee for an interview on the subject of emigration. Colonel Worth thought there "*were 50 or 70 Indians about the place of meeting which he describes as one of the most dense hammocks he has ever seen. Their rifles were laid upon logs, loaded and ready for use. Suspicion is the order of the day. They cheated Genl. Jesup who took revenge by seizing a party under a flag of truce & they are afraid of being taken now. . . The Indians thus far seen are well dressed. Some few are dressed entirely in deer skins, but some have cloth leggings and nearly all have calico shirts. We see but few blankets. There is so far as seen a full proportion of ornaments—beads and feathers.*"[16]

Tiger Tail sent word that he would be present for a talk with General Armistead, but suddenly on the night of the fourteenth the 200 Indians in the neighborhood suddenly disappeared and General Armistead "was entirely subdued and broken spirited. His confidence in his success had been boundless and his letters to Washington have doubtless been in that temper."[17] He was so exasperated that he gave

15 Manuscript Diary of Col. Ethan Allen Hitchcock, the property of Mrs. W. A. Croffut, Washington, D. C. Colonel Hitchcock served many years among the Indians and recorded in a series of diaries his impressions and experiences among these people: for an account of him see Grant Foreman, *A Traveler in Indian Territory, the Journal of Ethan Allen Hitchcock, late Major General in the United States Army;* W. A. Croffut, *Fifty Years in Camp and Field.*

16 Hitchcock Diary.

17 *Ibid.* The following illuminating account is taken from a long letter written at Tampa Bay, Florida, October 22, 1840 by Major Ethan Allen Hitchcock to his brother Samuel Hitchcock of St. Louis, now in the possession of Mrs. W. A. Croffut of Washington, D. C.

"In 1836 . . .I thought . . .when I heard of the massacre of Maj. Dade and his command . . .that the Indians had made a treaty to emigrate in good faith and had violated their engagements, signalizing their violation of faith with the most wholesale and barbarous murders. In that opinion, as you know I entered Florida as a volunteer, being on furlough at the time. I no sooner reached Fort King and had access to

orders for his troops to pursue the Indians and in the event that any of them thereafter should present themselves with a flag of truce, they

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officers who had been witnesses of the proceedings of the Govt. than I entirely changed my mind and I ascertained the history of the matter to be substantially this: That some 20 years ago a treaty was made at Fort Moultrey by which the Govt. undertook to secure the Seminoles in the peaceable possession of this country for the period of 20 years. This is important, for if the Indians had no right to the country before the treaty (which has been alleged) they had an undoubted right after it.

"When negotiations were opened with them in 1832 to induce their emigration, the Indians at once answered 'let the 20 years pass and we will talk with you.' This was the language to the Govt. Commissioner for several days in succession, when the articles in the treaty proposed for their acceptance were altered by introducing one article giving the interpreter $100 and another by which the Indians were to send a delegation of 6 Indians to examine the new country west of the Arkansas.

"Now the interpreter was a runaway slave from Pensacola on whom the $100 in prospect operated as a *bribe* and it was so spoken of by the Comr. in an interview with Gen. Jackson in the presence of Capt. Thruston, who stated the fact to me. Col. Gadsden, Commr. remarked to President Jackson, that he 'never could have done anything with the Indians if he had not bribed the interpreter with $100'."

"The Indians have always held one language in regard to their understanding of the treaty. They have from first to last uniformly declared that the deputation to examine the new country had no power to confirm the treaty, but were to return and report the result of their observations when they, the tribe, were to assent or dissent. The deputation however were induced while at Fort Gibson (as I have heard, even under menaces that they should not otherwise return to their friends) to sign a paper signifying that they were satisfied with the country designed for them in the Treaty. This paper was regarded by President Jackson as completing the treaty and the Senate ignorantly ratifying it, it became to appearance the law of the land in '33 I believe. 2 or 3 years were lost however before any decided step was taken by the Govt. to enforce the treaty, during which time the President was fully advised of the state of the facts and of the disposition of the Indians, in the face of which he ordered the treaty to be carried into effect.

"The immediate consequence was the murder by the Indians, of the principal Chief who was favorable to emigration, which was followed by the murder of the Indian Agent, whose arrogance and insolence had been conspicuous in Council with the Indians, extending to the usurpation of authority by which he confined Oscola (sic) in chains and went through the form of degrading sundry Chiefs from their dignity in the tribe; a thing unheard of before and impossible in execution from the nature of the case. The war was then fairly entered upon and we are now after five years exertion and some 20 millions expenditure no nearer its termination than when we commenced; while Florida, from its present condition opens a field for runaway negroes and desperate white men where they are rather growing stronger than weaker every day, and there is reasonable ground to doubt whether fewer than 20,000 men could quiet the country short of five years to come and it might require ten years.

were at once to be made prisoners. The troops however, were unable to overtake or discover any of them for some time.[18]

The hunt continued and on March 21, 220 captive Tallahassee Indians were embarked from Tampa Bay for New Orleans; there on April 4 the party, reduced by death to 205 Indians and six negroes, boarded the steamboat *President* in charge of Maj. William G. Belknap for the ascent of the Mississippi river. On the nineteenth they were landed on the Arkansas opposite the mouth of the Grand river. Wagons were provided and the emigrants were taken from here to join their chief Mikanopy on the Deep Fork. Another party of 200 in charge of L. E. Capers, disbursing agent, left Tampa Bay on May 7 and reached New Orleans six days later. The emigrating agent was instructed to have them vaccinated and then permit them to see the city before sending them on; but he learned that there were lurking in the city "a sett of loafers from Georgia looking for negroes they pretended to claim, when in fact they have no more legal claim than I have." For safety the agent kept the Indians in confinement and on the sixteenth embarked them on the steamer *John Jay* in charge of Capt H. McKavett who landed them June 13 at the Choctaw Agency whence they marched overland to their new home.[19]

Alligator, Hotulke Emathla, and Waxie Emathla in charge of Capt. S. B. Thornton were employed to return to Florida and use their influence to secure more emigrants.[20] They descended the Arkansas river from Fort Gibson and on September 20, 1841, with six companies of the Fourth Infantry in command of Col. John Garland, they departed from Fort Smith for Florida. Each of the Indian emissaries was permitted to take with him one other and an interpreter.[21]

"I give you this little sketch in order that you may estimate the feelings with which I now enter this country. Five years ago I came as a volunteer, willingly making every effort in my power to be of service in punishing as I thought, the Indians. I now come, with the persuasion that the Indians have been wronged and I enter upon one of the most hopeless tasks that was ever given to man to perform."

18 *Army and Navy Chronicle*, X, 361, 377, 395, 426.

19 *Arkansas Gazette*, April 14, 1841; Capers to Crawford, April 4, 1841, OIA, "Seminole Emigration;" Arbuckle to Jones, April 20, 1841, AGO, OFD, 146 A 41.

20 Taylor to Jones, September 24, 1841, *ibid.*, 283 T 41.

21 Taylor to Worth, September 22, 1841, AGO ORD, *Fort Smith Letter Book* A (8).

Gov. R. K. Call in a special message to the Florida legislature recommending a vote of thanks to him.[34]

The steamer *William Gaston* with Pascofa's band on board departed for New Orleans but lost her rudder in a violent storm on January 29, and little hope for the vessel was entertained by her officers. However by skillful handling she succeeded in reaching Pensacola where a temporary rudder was rigged with which she made New Orleans some days later. Here the Indians were landed at the barracks and consolidated with earlier arrivals soon to ascend the Mississippi river.[35] These Indians in charge of Lieutenant McKavett left New Orleans March 4 and on the eleventh reached Little Rock where they were detained by low water; they were landed on the south bank of the Arkansas river opposite the mouth of the Illinois on April 26.[36] From here they were taken overland to their agency.

Making a virtue of the necessity, General Worth agreed that several hundred Seminole Indians might remain for the present in Florida upon conditions to which the Indians paid little attention.[37] They continued to live immured in the fastnesses of Florida, but the government was not allowed by the white people to forget their presence. Through emissaries of their own tribe in 1849 large financial inducements were offered them to join their brothers in the West. They were promised $500 a head for each man and boy capable of bearing arms, and $100 for each woman or child. The government promised to subsist them for a year after their removal and to pay for all cattle, hogs, crops and other property abandoned or left behind; to make them presents of clothing and blankets before starting; to pay all expenses enroute, and furnish a physician for the journey; and in addition large sums were offered by army officers to individual Indians of influence in the tribe, amounting in one case to $10,000. No such inducements were ever held out to any other tribe, but they failed to influence the Seminole Indians to leave their native land. These efforts were supplemented by a military force sent to overawe them, but the four or five hundred Indians hidden

34 *Apalachicola Journal*, December 31, 1842; *National Intelligencer*, January 19, 1843.

35 *New Orleans Weekly Picayune*, February 13, 1843.

36 McKavett to Jones, March 31, May 1, 1843, AGO, OFD, 121 M 43, 145 M 43.

37 Report of Commissioner of Indian Affairs, 1849.

in Florida refused to yield. In 1851 a commission was issued to Luther Blake to go to Florida and attempt their removal. He was authorized to offer $800 to each warrior and $450 for each woman and child who would agree to emigrate; but this effort also was fruitless.[38]

An abortive attempt was made in 1856 by army officers at Fort Gibson to take a delegation of Indians to Florida for their influence on those remaining there; but the Indians convinced them that if the enterprise were directed by the military it was doomed to failure. In the winter of the next year Elias Rector, superintendent of Indian affairs for the southern superintendency, S. M. Rutherford, the western Seminole agent, and W. H. Garrett, Creek agent, took to Florida a delegation of forty Seminole and six Creeks. At the cost of a large sum of money Rector engaged the services of a number of influential Florida Seminole Indians, including the chiefs Holahta Micco and Billy Bow Legs;[39] and with their assistance and by dint of weeks of labor and searching through the Everglades secured 165 of what Rector called the hostile Indians for removal to the West. Of this number 121 were women and children and the remainder warriors. They included ten of the Mikasuki band, leaving twelve warriors and five very old men who declined to emigrate and abandon their venerable but implacable chief Sam Jones, then 108 years old, but promised they would remove after his death.[40] Rector's party sailed from Fort Myers, Florida, May 4 and proceeded by way of New Orleans, the Mississippi and Arkansas rivers; on the steamboat *Quapaw*, they arrived at Fort Smith May 28, and in a few days, after securing wagons for their transportation, in charge of Rutherford, they proceeded overland, reaching their agency June 16; after their arrival an epidemic of fever took a number of lives in the party.

At last Indian removal was an accomplished fact. The white people had come into possession of the ancestral domain of the aboriginals. Exulting town boomers, land speculators and farmers overran the land

38 *U. S. House Executive Document No. 2, p. 306, Twenty-third Congress, first session.* A deputation of Seminole Indians headed by their chief John Jumper, in charge of Maj. Horace Brooks departed from Fort Smith April 22, 1850, in the steamboat *J. B. Gordon* enroute to Florida where they were to use their influence to induce their brothers to emigrate at once (*Fort Smith Herald*, April 27, 1850, p. 2, col. 1).

39 Bow Legs (Bolek) was a brother of Alligator (*American State Papers*, "Military Affairs," VII, 848).

40 Rector to Thompson, May 9, 1858, OIA, "Seminole."

The Five Civilized Tribes

GRANT FOREMAN

INTRODUCTORY NOTE BY JOHN R. SWANTON

Norman
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which Fort Arbuckle was afterwards built. Here they remained until the winter of 1850-51 when they all left for the Rio Grande and joined Wild Cat's colony.[24]

Wild Cat's operations and his undoubted astuteness and influence with other Indians made him a figure to be reckoned with by the Government and in March, 1851 a commission was sent out to have a talk with him and other Indians in Texas. It was hoped to discover Wild Cat's real purpose and to determine the extent of mischief or of good he was capable of doing. The commission found the Seminole chief at Eagle Pass, Texas. He was temporarily staying in Mexico with his colony but denied that he was a permanent resident of that country. He said "his great father had given him land in Arkansas as a home and a burying ground for him and his people, on which they might hunt and raise corn and live in peace with their brothers, the Whites. But, he said, the Creek Indians had come upon his land and tried to involve him in difficulties; had stolen from him his Negroes, and to avoid a war he had left that place and started to search for a new home in Texas." And that when he had found it all his people in Arkansas would follow him. "He seemed," as he stated, "pressed down with care and anxiety on account of his people, and troubled because of the difficulties and doubts that surrounded him. He spoke with feeling, and his countenance gave proof of it. His manner was entirely respectful and kind; there was no insolence—no threats, no unkind reproaches, but expressions of deep friendship."[25]

24 Marcy to Jones, November 25, 1851, AGO, OFD, 489 M 51.

25 "Memorandum of a conversation between Wild Cat or Coachoochee and Cols. Cooper and Temple, Eagle Pass, Texas, March 27, 1851," OIA "Misc. File" T 463.

CHAPTER TWENTY / *Justice to the Indians*

More than a decade had now passed since the removal of the great body of Seminole Indians; they were far behind the other four immigrant tribes in the scale of progress and adaptation to their new environment. There were several reasons for this situation, none of which reflected on the character of the Seminole who were its innocent and helpless victims.

The country they left in Florida encouraged a life of idleness, for abounding in fish, game and fruits much of the time, it gave little incentive to labor, and most of the Seminoles' work was done by their slaves. The climate required little clothing and shelter. The change therefore was most difficult for these people. Removed to a colder climate, obliged to clothe themselves, build houses and till the soil it was harder for them to adapt themselves to their new environment than for the other tribes. They did not all apply themselves to farming and were restless and discontented, some of them pushing farther west where there was better hunting.

The principal reason for their tardy recovery was the stupid and vicious policy conceived by the Government to force these people to become subjects to the Creeks. The latter outnumbered them ten to one, yet with no thought of their history or of the consequences, it was proposed to amalgamate the tribes, an obviously impossible thing. Fear of this scheme kept nearly half of the tribe hanging around Fort Gibson for years, idle, purposeless, destitute and deteriorating; and other hundreds remained secreted in the Everglades of Florida rather than submit to the domination of their traditional and only enemies, the Creeks.

It was this foolish and unjust policy more than all other influences

the larger portion of the tribe regard as arbitrary, unjust, and detrimental—it is strange that no facilities were furnished them for education and improvement. Possessing their own annuities, scant though they are, they should also have had their own school, farming, and blacksmith fund. They will not share with the Creeks in these, even were they invited so to do; and if any improvement is expected from them it will only be attained after a separation from the Creeks is effected, and the means of culture furnished them by the government."[3]

An enlightened Indian administration under the newly created department of the interior had at last recognized the necessity of undoing the great mistake of trying to unite the Choctaw and Chickasaw tribes and had effected that measure of reparation by the Treaty of 1855.[4] It now realized the justice and greater necessity of doing as much for the Creeks and Seminole. Though behind that gesture of restitution was the bargain for the assistance of the western Seminole in effecting the removal of their people remaining in Florida. A treaty was thereupon entered into in Washington, August 7, 1856,[5] by and between the delegations of the Creek and Seminole tribes and the United States, by which the Seminole Indians were given a separate tract of land lying west of and adjoining the country secured to the Creeks; the latter making a formal cession to the Seminole of the lands described, and the United States guaranteeing the title. The land conveyed to the Seminole was a long narrow strip lying between the Canadian River and the North Fork of the Canadian River and extending from about the middle of what is now Pottawatomie County, Oklahoma, northwestward to the One Hundredth parallel, or the present western boundary of Oklahoma, and estimated to embrace 2,169,000 acres.

It was provided that as soon as the Seminole should remove from the Creek lands where they were then living to the country conveyed to them, the laws of the Creek Nation should have no further effect within those boundaries. Separation of the Creeks and Seminole was thus made effective by the terms of the treaty and the Government agreed further that payment would be made to the Seminole for the improvements they would be obliged to abandon in the Creek country on their removal; and that as soon as they had removed to their new

3 *Ibid.* for 1855.
4 *Kappler*, II, 531. The department of the interior was created in 1849.
5 *Idem*, II, 569.

home necessary buildings for an agency[6] and for a tribal council house would be erected. The Government expressed its solicitude for the removal of the Seminole in Florida to the new Seminole country and liberal inducements were made to them to leave Florida. Rifles, blankets, ammunition, hunting shirts, shoes, and tobacco were promised them; $20,000 for improvements and other sums for plows, axes, seed, looms, cards, and wheels.

The leaders of the western Seminole saw in the embarrassment of the Government in its efforts to remove the Florida Indians an opportunity for profitable bargaining. They knew that forcible removal of the Seminole was out of the question and that the Government must have their assistance to bring about what it so ardently desired. Astute to learn how much the Government needed their help and knowing that large sums of money vainly had been offered to the Florida Seminole to remove, besides the vast sums expended in the war for their conquest, they adroitly held the Government to terms highly advantageous and just to themselves; severed the bonds with which a foolish governmental policy sought to hold them in subjection to the Creeks; located them where they could live in peace by themselves, under their own laws;[7] where they and the Creeks would be at peace with each other; made provision for the education of their children, and for the encouragement of agriculture. The wonder is that a government so long could have ignored the evils of this situation, and continued a stupid unjust policy towards these people.

The Seminole agreed in the treaty to send to Florida a large delegation under an agent of the Government to render such service as they could in securing the consent of the members of the tribe there to emigrate. Besides the separation from the Creeks, the Government agreed to pay the Seminole $90,000 in lieu of their improvements, and to defray the expense of their removal; to pay them $3,000 annually for ten years for the support of their schools; other sums for agriculture and blacksmiths; and to set aside the sum of $250,000 the interest of

6 A contract was made with Henry Pope of Sebastian County, Arkansas, October 30, 1838, for a Seminole agency building, thirty-two by forty-four feet in size and a log kitchen sixteen feet square (OIA).

7 The Seminole Indians were practically penniless, having no tribal funds or annuities as the other emigrant tribes had; they had received nothing on their removal to the West.

which at 5 per cent annually was to be paid them as an annuity, and as much more when they were joined in their new home by the Seminole of Florida.

And thus at this very late day the Government for the first time appeared to give thought to the welfare of this tribe of Indians; neglected as to schools and everything else necessary to their development and progress, retarded by the inertia of their own backwardness, they had been allowed to drop far behind the other immigrant tribes, the Government making little effort to improve their condition. And what they had accomplished had been largely in spite of, and not by the help of, the Government.

The Seminole Indians were well satisfied with the terms of the new treaty but when some of them went to their new country to select sites for their homes they found themselves menaced by the roving tribes of the prairies. To meet these Indians on their trading and hunting expeditions was one thing, but the prospect of trespass and depredations by these restless freebooters on the homes and herds of the immigrants was disquieting and they asked that the Government give them some protection. Only a few located in their western home for more than a year after the execution of the treaty. The Government postponed the payment of the funds promised until the emigration of the Florida Indians and the immigrants anxiously looked forward to the realization of these terms. The population of the tribe had now diminished to 1907 of which 1,000 were females.[8] The immigrants were anxious to engage in the emigration of their people in Florida in order not only to receive the consideration promised them; but they very much desired to add to their population now much depleted by deaths, so as to increase their importance and influence.

On March 17, 1857, Elias Rector was commissioned superintendent of Indian affairs for the Southern Superintendency and in November S. M. Rutherford, the Seminole agent, notified the tribe to select the delegation that was to go to Florida. An abortive effort had been made the preceding winter by the officers at Fort Gibson to handle the matter. Second-lieut. Edgar O'Connor of the Seventh Infantry, had been elected to accompany and take charge of the delegation consisting of both Seminole and Creeks; but when the Indians arrived at Fort Gibson

8 *Report* of commissioner of Indian affairs for 1857.

they learned that no provision had been made for paying them and they refused to go. They said also that if the military had anything to do with the removal it was doomed to failure. The first of the January following, Rector and Rutherford and W. H. Garrett, Creek agent, left Fort Smith for Florida with a delegation of forty Seminole and six Creeks.

On their arrival in Florida, they spent nearly three months in coöperation with the Federal troops searching through the Everglades, counselling with Indians they could reach, and endeavoring to persuade them to emigrate. All was not peaceful negotiation however if one may judge from Colonel Rector's letter from Fort Myers: "Col. Rutherford has taken with him a niece of Billy Bowlegs who was a prisoner at Egmont Key, as a guide; she says that Bowlegs is disposed to negotiate, which statement is confirmed by the last prisoner taken, who is an Indian of Bowleg's Band, and now in the hospital at this place, having been shot in the leg in being captured."[9] It was several weeks later (March 15) that Rector succeeded in holding a council thirty-five miles southwest of Fort Myers, with representatives of the bands in Florida. Upon offering them large sums of money and other inducements, Bowlegs and his principal men agreed to emigrate their families; and soon after, Nocus Hadjo reported that his chief Assoouwah (Assunwha) had already begun moving his women and children out of the swamp to a point where wagons could be sent to assist them in reaching Rector's camp. Bowlegs brought the twenty-three members of his family to the camp of the delegation from the West and then went in search of a part of his band who were living in boats whom he agreed to remove. Rutherford and Jumper had gone to look for a small remnant of Tallahassee Indians seventy miles back of Tampa Bay.

Rector was enthusiastic over the prospect of bringing to an end the "war" in Florida. The only doubt he entertained was based upon an almost incredible situation in that state: the sordid interest of the people in continuing the "war." "The greatest obstickle in the way of successful removal of the Indians is to be aprehended from the volunteers and disapointed citizens of Florida, who, I am sorry to say would dislike this war to be ended."[10] Hunting and killing the Indians was

9 Rector to Mix, February 10, 1858, OIA, Seminole R 481.

10 *Ibid.*, March 29, 1859, OIA, Seminole R 526.

more than a sport for these people. For years the provisioning of expensive and usually futile expeditions into the retreats of the Indians brought financial returns to those who had supplies for sale, and the "volunteers" enjoyed employment and subsistence at public expense. This shameful and cruel motive mentioned also by other Federal officials, contributed not only to the misery of these unhappy people but to the ineffective character of the campaigns waged against them.

At last Colonel Rector, Rutherford, and Garrett sailed from Fort Myers May 4, on the steamer *Grey Cloud*, with 125 Indians and proceeded to Egmont Key where they took on board forty more who had been captured by the Florida volunteers. Of the total of 165 hostiles, thirty-nine were warriors and 126 women and children. The warriors included Billy Bowlegs,[11] principal chief of the Florida Indians, Assoonwah second chief, Nocose Emathla, Foos Hadjo, subchiefs, Nokus Hadjo, inspector general, and Fushutchee Emathla. This contingent included ten of the Mikasuki or Sam Jones band, leaving with Sam Jones twelve warriors who refused to desert their venerable and implacable chief then 108 years old. They said they would stay until his death and then they also would emigrate. There remained in Florida two small parties of "Boatmen" Indians who included twelve warriors, and a small party of Tallahassee. But these Indians were so successfully concealed in the Everglades, the Indians guides themselves had been unable in several months search to find them. Rector had promised five of the chiefs $1,000 each in addition to large sums paid Billy Bowlegs and the warriors, women and children.

Rector and his people transferred at New Orleans on the Steamer *Quapaw*, and arrived at Fort Smith May 26. The Creek and Seminole delegations in charge of Agent Garrett left New Orleans on the steamer *Arkansas*, and arrived at Fort Smith May 28. On June 1, Bowlegs and his party of 164 Seminole Indians were placed in charge of Colonel Rutherford who started with them for their new home on the third. They were thirteen days on the road contending with bad weather, worse roads and high water. Many of his people were sick, four of them died on the road and more died after their arrival at their

11 Bowlegs died in the West and his remains are interred in the National cemetery at Fort Gibson. "Bowlegs" was a corruption of "Boleck." His death was reported in *Report* of commissioner of Indian affairs for 1859, p. 529.

destination from an ailment that assumed the character of typhoid fever, said Rutherford.

There was more work for Rector in Florida and in the autumn he sought another delegation to accompany him. He was obliged to agree to Bowlegs's demand for $200 for his service as head of a party of eight Seminole Indians. They set out from Fort Smith in December 1858. Of the remnant of the tribe left in Florida many were now willing and anxious to leave and join their friends and relatives in the West, though influences were at work to interfere with the movement, said Rector: "There are many unprincipled white men in the country, men ready for the worst and lowest crimes, who for a temporary and precarious livelihood furnish the Indians with small quantities of such supplies as they need, and hold out false promises of future assistance. There is another class more villainous then the other, who are endeavoring to retain the Indians here until my present effort shall have been made, in the hope of raising fresh disturbances and of inducing the Government to again send troops into the country.

"Besides such opposition as this I have had no means of travel. I could not make deposits of provisions for my delegation at convenient points; they have had to overload themselves with supplies of food and blankets, and their movements in the jungles and among the palmettos have necessarily been very laborious and slow. No steamer has been at my disposal--nothing that could facilitate my movements except wretched sailboats, and these have rather retarded than advanced them.

"Besides the Boat Party I have had an interview with another band, scarcely known in this country—a band which Bowlegs thought had been killed in the last war. It was fortuitous that I saw them, as their existence in the country might not have been known except from depredations and murders. They were under the lead of the celebrated Black Warrior. Some of them appear favorable to emigration."

Rector arrived on the steamer *Magnolia* with seventy-five Seminole warriors, women and children off St. Marks February 15 ready to depart for New Orleans. The remainder of these wretched people he consigned to the "mercies of the Florida troops which Governor Perry in his recent message proposed to visit them with."[11]

11 Rector to Denver, November 22, 1858, January 22, 1859, February 15, 1859, OIA.

Agent Rutherford urged that the Government comply with its promise to erect buildings for an agency and a council house and blacksmith shops for the Seminole immigrants. The Indians said that as soon as these buildings were started they would select sites for their homes.[13] By 1859 only about a third of the tribe had removed to the land set apart for them in the Treaty of 1856, but others were preparing to remove as soon as their crops were gathered. The Florida immigrants lately brought as prisoners were much dissatisfied and restless and showed little inclination to settle down and build homes. The number in the tribe, according to a recent census was 2,254 of which 1,009 were females. The Seminole Indians had been reduced in population nearly 40 per cent in thirty years, by the war of extermination waged against them and the fugitive manner in which they had lived in the swamps to escape capture. As usual, none of the $2,000 promised in the Treaty of 1856 for agricultural assistance had been advanced to the Indians who were becoming restless for a fulfillment of that engagement; and Rutherford urged that the Government comply with this promise. There was no school in the Seminole Nation but a few of the leading members of the tribe were anxious that the treaty stipulation on the subject be carried into effect.

The Seminole people held a general council in the summer of 1859 where they discussed the project of setting up a government such as was enjoyed by the other immigrant tribes. They desired the Federal officials to withhold from their annuities and turn over to the officers of the nation a sum sufficient to meet the expenses of their proposed government. They wished to create a light-horse to execute their laws, and to set up other officials for the administration of their national government. Their chiefs and law makers expected to be paid for their services also.

The Seminole agency building was erected in 1859 about sixty miles west of the former agency one mile west of the eastern boundary of the Seminole country and two miles north of the California road laid out by Lieutenant Beale. And the next year a council house thirty-six by twenty feet containing two rooms with a fire place in each, had been constructed for them eight miles northwest of the agency.[14]

The Civil War had now begun. Agent Rutherford and the Indians

13 *Report* of commissioner of Indian affairs for 1858.
14 *Ibid.*, 1860.

were still urging that schools be set up in the Seminole country as promised in the treaty. "The greatest clog upon the advancement of civilization, and the general diffusion of national pride and spirit among this people, is the want of schools. Since moving up to their new country they have been deprived of the only one which heretofore they could avail themselves, to wit, Oak Ridge Mission, in the Creek country. They are very anxious to have the fund for educational purposes provided by the Treaty of 1856, applied in establishing a manual labor school, of like character and upon similar conditions to those in the Creek country. . . . . This is a subject that has been referred to in each of my reports; and, in view of its importance to these people, I cannot refrain from again calling the attention of the department to it through you.

"By improving their educational facilities, all the ignorance and superstition which now characterize them as a tribe will vanish, and a few years will find the Seminoles an intelligent race, worthy to be considered a part of our common country, and fully competent to aid in sustaining its reputation for intelligence and Christian philanthropy; for the Seminoles are by no means deficient in native force of character and keenness of wit. It wants only cultivation, a knowledge of letters, and the excellencies of moral and mental discipline; and I ask you to consider the importance of this matter and place it in a true light before the department. There seems to be among them a preference for the original customs and habits of their tribes; it is only the progress of civilization that can remove these absurdities, and render them a happy and contented race.

"The Seminoles have been trying to organize their government, but have not succeeded in perfecting it. A good many prefer adopting their former habits and customs, while others desire to place themselves under laws similar to those by which the Creeks and other tribes are governed. It is doubtful however, which party will succeed. They have no funds set apart for the support of their government, and this circumstance will make much in favor of those who favor adopting their former habits and customs."[15]

Before the surveyors could run the boundaries of the new grant to the Seminole tribe, they were compelled to abandon their work

15 Rutherford to Rector, August 15, 1860, *report* of commissioner of Indian affairs, for 1860.

by the hostilities of the Comanche, Kiowa, and Cheyenne Indians in the vicinity. They committed depredations also on the immigrant Seminole who complained for several years of the loss of their live stock.

The Indians were slowly improving; moving on to the land assigned them, adapting themselves to the change from their former home in Florida, building homes and making their little farms. They were still crying in vain for the schools promised them years before when the Civil War began and they were obliged to flee from the country. After the war most of them were for a time again located near Fort Gibson, all of their improvements and stock having been swept away by that conflict. A new treaty was made in 1866[16] by which the Seminole tribe ceded their land back to the United States and received in place of it the very much diminished tract of 200,000 acres that has since been their home, co-extensive with the present county of Seminole, Oklahoma. And thus nearly thirty-five years after the Government by devious means secured the execution of the so-called treaty with the Seminole which drove them from their homes in Florida, they became fixed upon a tract of land of their own. Here they applied themselves industriously to farming, built cabins and fenced their lands; schools were erected, and these neglected Indians though much behind, caught step with the other tribes, and exhibited a commendable zeal for improvement.

16 Kappler, *op. cit.*

BOOK FIVE / *Cherokee*

The Seminoles

Edwin C. McReynolds

NORMAN
UNIVERSITY OF OKLAHOMA PRESS

uel Rutherford placed the number, "including the Florida and Mexican emigrants," at 2,253, of whom 1,009 were female and 1,244 male. The actual change in two years cannot be determined accurately because figures on the Seminoles returning from Mexico are not available; but without including the emigrants the census of 1859 probably would have shown a slight decrease. It is certain that a decline of about 40 per cent had resulted from four decades of rule by the United States, including warfare, removal by force, unjust treaty provisions, and corrupt administration of treaties. The story of Seminole relations after 1819, though containing some bright spots, cannot be called a truly excellent colonial record.

J. W. Washbourne left the Indian Service under serious charges by Superintendent Elias Rector, who asked his immediate removal. Washbourne, in handling the $90,000 stipulated in the treaty of 1856 to assist in the removal and to pay for Seminole losses, was accused of making a corrupt bargain with the principal chiefs. Rector said that Washbourne received about $13,000 "in consideration of his permitting the chiefs to appropriate certain portions . . . to their own use and benefit."[27]

Samuel Rutherford, who was to follow Washbourne as agent of the Seminoles, accompanied Rector and the Creek agent, William H. Garrett, on a mission to Florida in January, 1858. Colonel Rector assembled his council on the West Coast, south of Fort Myers on March 15, 1858. He was authorized to make attractive terms with the chiefs and warriors who would agree to emigrate, and use their influence in favor of complete removal of the remaining Indians. Many of the leaders quickly gave their support to the movement when they found that Billy Bowlegs was about to agree upon terms. Other head men surrendered for emigration or were taken prisoners during the next two months: Assunwha, Nocose Emathla, Foos Hadjo, Nocus Hadjo, and Fuchutchee Emathla. The steamer *Grey Cloud* carried a party of 125 from Fort Myers, west of Lake Okeechobee, to Fort Dade on Egmont Key at the entrance of Tampa Bay, where the Florida Volunteers had concentrated some forty Indians for safe keep-

[27] Rector to Thompson, Oct. 1, 1859, O. I. A.: Rector's Letter Book.

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ing. The entire party of 165 consisted of 39 warriors and 126 women and children. Arpeika (Sam Jones) was still alive, probably more than one hundred years of age, but was too feeble to travel. Ten of his Mikasukies were included in the emigrants, but twelve warriors remained in Florida with their old chief.

The party of peace commissioners returned on the boat with Billy Bowlegs and his followers to New Orleans. Colonel Rector then took charge of the emigrant Seminoles, and traveled up the river on the steamer *Quapaw*, reaching Fort Smith on May 26, 1858. William H. Garrett, Samuel Rutherford, and the Indian peace delegation arrived at Fort Smith two days later on the steamer *Arkansas*. The rest of the journey was made by wagon road, and the party of emigrants buried four members along the way. It rained almost continuously, streams were out of their banks, and thirteen days were required to travel from Fort Smith to Little River. Other members of the band sickened and died after their arrival in the Seminole Nation, probably from typhoid fever.

Another commission of friendly Seminoles was needed in Florida. Elias Rector bargained with Bowlegs, who agreed to head a small group of Indians and venture into the Everglades on a short tour for which he was to receive $200 in cash. In December, Colonel Rector and his party of eight Seminoles were back in Florida. In addition to the long-sought Boat Indians, who were the principal object of their search, they found the hiding place of Black Warrior and his followers, who were known to the people of Florida only through wild and improbable stories of their speed in handling boats, their implacable hatred of the whites, and the primitive savagery of their customs. Even Billy Bowlegs had not been certain that Black Warrior and his small band were still alive in the heart of the swamp.[28] A total of seventy-five Seminoles were persuaded to join the emigrants, and the party took passage for New Orleans on February 15, 1859—the final gesture of a costly and unwise policy.

[28] Rector to Denver, Jan. 22, and Feb. 15, 1859; Rector to Charles E. Mix, March 29, 1859, O. I. A.: Rector's Letter Book; Foreman, *The Five Civilized Tribes*, 274.

REPORT

OF THE

COMMISSIONER OF INDIAN AFFAIRS,

ACCOMPANYING

THE ANNUAL REPORT OF THE SECRETARY OF THE INTERIOR,

FOR THE YEAR 1858.

WASHINGTON:
WM. A. HARRIS, PRINTER.
1858.

There have been no schools in this agency for the last two years. A subject of so much importance to the Indians will require further investigation to mature a recommendation that would be calculated to advance the educational interests of the Indians of this agency. In a short time I will make this the subject matter of a special communication to the Indian department.

Very respectfully, your obedient servant,

SETH CLOVER,
Indian Agent.

Dr. A. M. ROBINSON,
Supt. of Indian Affairs, St. Louis, Missouri.

No. 39.

SOUTHERN SUPERINTENDENCY.

SOUTHERN SUPERINTENDENCY OF INDIAN AFFAIRS,
Fort Smith, Arkansas, October 26, 1858.

SIR: Since the transmission to your office of my annual report for 1857, I have, as you have already been fully advised, visited Florida, accompanied by the United States agents for the Creeks and Seminoles and a delegation consisting of forty Seminoles and six Creeks, the result being the peaceable removal to the Seminole country west of the principal leader of the hostile Seminoles, Billy Bowlegs, and one hundred and sixty-three of his followers, male and female, at an expense to the government of $70,352 14.

Soon after my return I was ordered to Washington, and again reached this place, with moneys for the several tribes in my superintendency, on the 27th day of September. I have now just returned from the seat of government of the Choctaw nation, at Boggy Depot, having delayed this report until I should inform myself in regard to the difficulties among the Choctaws and receive the report of their agent.

I transmit herewith the reports of George Butler, esq., agent for the Cherokees, Andrew J. Dorn, esq., agent for the Senecas, Senecas and Shawnees, Quapaws and Osages, William H. Garrett, esq., agent for the Creeks, Samuel M. Rutherford, esq., agent for the Seminoles, and Douglas H. Cooper, esq., agent for the Choctaws and Chickasaws, which, with the accompanying reports from teachers, &c., will give nearly all the information in regard to these tribes possessed by myself.

The condition of the tribes within my superintendency continues very much as at the date of my last report. Most of the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws, cultivate the soil to a small extent; but having no individual proprietorship therein, they are continually on the wing, moving from place to place; and one sees, in travelling through their country, more deserted than inhabited houses.

They are generally poor farmers and poorer livers, without gardens

lish pre-emptions, so soon as the government buys it from the Cherokees; and the United States would, in all probability, lose by the purchase. If the Cherokees are invested with the right to sell and make titles, these squatters, to whom government owes so many of its Indian difficulties, and the treasury so many of its depletions, would probably receive a salutary lesson. If no such step is taken, and the land remains as it is, these trespassers should be swept from it at the point of the bayonet, if the good faith of the United States cannot be otherwise preserved.

The Creeks are quiet and peaceful. The treaty of 1856 was wisely framed so as to make permanent peace between them and the Seminoles; and with one exception, they have no further claims upon the United States.

By that treaty it was agreed that $200,000, a part of the million due and payable to them, should be *retained*, bearing interest until the Seminoles should be removed from Florida. This provision was made in order that they might have a sufficient inducement to send a delegation to Florida, in compliance with their stipulation to that effect in the treaty. They have done so, and it is not desired that they should furnish another delegation. Most of the Seminoles have removed, and the rest are peaceful and no doubt will remove this winter. They are but a handful and unimportant. The war so many years continued is ended, the volunteers are discharged, and the regulars ordered away. The Creeks claim that they are entitled to receive the $200,000 and interest, and I do not see how their right can be denied. To delay its payment would create great dissatisfaction; and I strongly recommend that the department ask the necessary appropriation from Congress at the ensuing session.

I also again call your attention to the only subject of discontent among them; the disposition of the proceeds of the twenty sections of land reserved for orphans by the treaty of 1832. There can be no doubt *to whom* these moneys belong, and that they are now denied to those entitled to them. The agent of the Creeks has so fully stated the matter, that I need do no more than allude to it, and suggest that it is evidently a serious denial of justice to withhold these moneys while the United States is really not all interested in doing so, inasmuch as they are already invested in stocks and the interest thereof is now wrongfully paid to the nation.

The Seminoles lately removed from Florida are entirely peaceful and quiet; and the whole tribe is much better satisfied than it expected to be with its new country, which turns out to be a much finer country than was supposed.

The mass of the Seminoles having removed from Florida, it becomes indispensable for Congress, in order to keep the promises made in the name of the United States, to provide for the payment of the interest on the additional sum of $250,000, which, by the treaty of 1856, was to be paid the nation after those in Florida should have emigrated If that should be delayed, great trouble and discontent would follow

I also again recommend that all sums on which the governmenti bound to pay interest to the Creeks or Seminoles, be invested in safe six per cent. State stocks, by which the Indians may receive a much

Seminole country, as due to the good faith which the United States owe that people, and essential to their protection and to the peace and quiet of the frontier; and the speedy erection of the one determined on in the country assigned to the Wichitas; because without it no agency can be maintained there, nor the obligations of the government complied with. The presence of troops in the Choctaw country would have saved many lives. It is essential to the maintenance of order, the enforcement of the laws, the respectability of the agents, the influence of the United States.

I also advert to the suggestions in my former report in regard to administration of the estates of deceased persons; to making each agent a commissioner with power to admit to bail, to take depositions, &c.

And I again call your attention to the subject of the district court at Van Buren, and renew my recommendation that courts of the United States be established in the Cherokee, Creek, and Choctaw country. If that is not done, it were far better for the peace of the Indian country that the court at Van Buren were abolished. I again recommend that the attention of Congress be called to the subject of allowing to the Cherokees, Creeks and Seminoles, and the Choctaws and Chickasaws, each a delegate in the House of Representatives. The Cherokees and Choctaws are each entitled to one, by treaty; and it will be a very wise step to allow them their right.

I again recommend the entire abandonment of the system of *per capita* payments to the Cherokees, Creeks, Seminoles, Choctaws and Chickasaws I have in my previous report assigned the reasons for this; and the late commissioner did me the honor to endorse my opinion on this point. Longer experience and more reflection have more thoroughly convinced me of its correctness. Annuities and *per capita* payments destroy all feelings of self-dependence, and are standing sermons against industry, thrift, and exertion. The annuities of these people, and at least of the Cherokees, Choctaws and Chickasaws, should be capitalized, and the capital paid them at once; and all their funds held by the government, be invested in State stocks and turned over to them. Then, if an act of Congress was passed empowering each of these nations to survey and sell such portions of their land as they pleased, to individuals, and to make complete and perfect title in fee by patent, we might hope to see this fine country opened to settlement; for when the common Indian once found that the land which is now worthless to him, would put in his pocket gold, and that those who wanted it would have to buy it and could not cheat him out of it, the instinct of interest would soon lead him to insist on having his share of the surplus, and turning it into cash.

I have the honor to be sir, your very obedient servant,

ELIAS RECTOR,

Supt. Indian Affairs, Southern Superintendency.

CHARLES E. MIX, Esq.,

Commissioner of Indian Affairs.

No. 50.

TALLAHASSEE, M. L. SCHOOL, *October* 7, 1858.

DEAR SIR: In compliance with your request and the regulation of the department, I beg leave to present the following report of the Presbyterian mission and school among the Creek Indians.

I am happy to inform you that in *our* estimation the manual labor school, under the care of the Presbyterian Board of Foreign Missions, at this place is in a prosperous condition.

During the session of nine months, which closed on the 15th July last, one hundred and two pupils had been in connexion with the school, viz: ninety-six Creeks, four Cherokees and two whites; of whom fifty were boys, and fifty-two girls. One of the Creek girls was a day scholar, all the others boarded in our family.

The average daily attendance of the *Creek boarders* during the session, was eighty-two and a half. The exercises of the pupils were very similar to those of past years. The boys are required to work two or three hours daily in the garden, farm or work-shop, or in cutting wood, drawing water, &c. The girls, in like manner, are employed in knitting, sewing, cooking, washing, ironing, milking, &c.

They are required to devote the usual time to study, viz: from nine o'clock a. m. to four p. m., allowing one hour at noon for refreshment and recreation.

The studies pursued are spelling, reading, writing, mental and practical arithmetic, algebra, geography, English grammar, natural philosophy, Watts on the Mind, history, composition and declamation; a small class of three boys is engaged in the study of the Latin language.

Owing to the important fact that most of the pupils of the previous year returned and took their places in school, a much larger proportion of the scholars were engaged in the higher branches of study than in any former year. Their improvement generally has been good, that of some has been very good. At the close of the session, the school was publicly examined before a large audience, in which were many who were capable of judging as to the progress of the pupils. The reading of original compositions by the girls, and declamation by the boys, formed a part of the public exercises. Three of the Creek boys delivered original speeches, in which they gained for themselves much applause. The health of the children during the session, with a few exceptions, has been very good.

As to my labors in a *ministerial* capacity, I would remark that there is much that is encouraging. The people are generally favorable to religion, and are attentive hearers. An interesting church of forty-five members has been built up here, of which eight of the pupils are members. At the Kowetah station we have a church of thirty-nine members.

With the aid of interpreters, we have prepared several *books* in the Creek language. The translation of the Gospel of Matthew, printed and circulated some time ago, is doing a good work. It is read with

cagerness by a great many, and with a very few unimportant exceptions, is approved by all.

During the past year, the second edition of the *Creek Catechism*, and a religious work entitled, "*Come to Jesus*," translated into Creek, have been published and partly circulated among the people.

The anxiety thus aroused among all classes to read these books, but especially *the word of God* in their own language, is so great, that this may be truly marked as *a new and important era* in the history of the Creeks. There is a growing interest also manifested in the education of their children.

I am happy, also, to report that but little *drunkenness* has been witnessed in our part of the nation for some years past.

This is doubtless owing to a three-fold agency, viz: *the enforcement of the United States laws* against the introduction and sale of liquor in the Indian country; *the efficiency of the Creek light horse company* in spilling the liquor when introduced; and the influence of the temperance society in discountenancing the use of all intoxicating drinks, and in moulding public opinion to sustain the laws.

Hoping that these indications of improvement will become brighter and brighter, and that the actual advancement of all classes in civilization and christianity may be commensurate with the great necessity of the case,

I remain, very respectfully, yours truly,

R. M. LOUGHRIDGE,
Supt. Presbyterian Manual Labor School.

Colonel WM. H. GARRETT,
United States Agent.

No. 51.

SEMINOLE AGENCY, *August* 18, 1858.

SIR: I have the honor to submit the following reports showing the present condition of the Seminole Indians, in compliance with the regulations of the Indian bureau.

I received my appointment as agent of the Seminoles on the 21st of November, 1857. I was immediately qualified, and on the 27th received of Major Rector, superintendent of Indian affairs, at Fort Smith, Arkansas, the annuity then due these people; being the 13th of fifteen instalments under the 4th article of treaty of January, 1845; with which I proceeded to this place, where I arrived on the 4th of December, and immediately caused a council to be called for the purpose of taking the census preparatory to the payment of the annuity, and also to settle the preliminaries for the selection of a delegation to proceed to Florida under the direction of Major Rector, superintendent, and to induce, if possible, their friends yet remaining in Florida to emigrate to their new homes in the west. The result of which has since been reported to the department by the superintendent, to which more reference is here made.

On my arrival here on the 4th, as before stated, I found the Seminoles in the highest state of excitement owing to the unequal and unjust distribution of the improvement fund, turned over by Major Rector, superintendent, to James Factor, who had been appointed treasurer of the nation, for the express purpose of receiving and paying out this fund. The Indians had called a council, which met about the 1st of November to investigate the alleged abuse, and had continued in session up to the last of the month, only a few days before my arrival. They had caused a considerable amount thus unjustly and wrongfully paid out to be returned. Still there was a considerable deficiency to satisfy those who had been either overlooked or designedly neglected. In order, therefore, to enable the national council to carry out their views of right and justice, they by unanimous consent agreed to make the three instalments due under the treaty of January, 1845, a national fund. As soon as they heard of my arrival, I was called upon by the national committee, and notified that the funds in my hands had been appropriated by the national council as a national fund, and that they were required so to inform me. I informed them if the amount was paid them it would have to be paid as annuity; that it would require the assent of the department before it could be regarded as a national fund, and that I would make known their wishes upon the subject, and recommend the application of the two remaining instalments for the objects to which they had been appropriated above referred to; which I do most cheerfully recommend to the favorable consideration of the department. Should the amounts above referred to be withheld by the government from the object to which they have been appropriated by the Seminole council, it would be the means of reproducing the excitement that prevailed among these people in 1857, and perhaps would lead to acts of violence. For I believe if they should become excited upon this subject again, nothing short of the lives of some of their principal men would appease their vehement exasperation and indignation. I would most earnestly recommend to the department, that the two payments yet due under the treaty of January, A. D. 1845, be authorized by the department to be turned over as a national fund. I would remark, that the payment made in December last, although made to the heads of families by me, was turned over by them to the national committee as soon as received.

On the 28th day of May I reached Fort Smith, in company with Major Rector, superintendent, and the emigrants from Florida. On the 1st of June, Bowlegs and his party, numbering one hundred and sixty-four persons, were placed in my charge by the superintendent, with instructions to proceed with them to their country west. I immediately proceeded to make the necessary arrangements for transportation, and was enabled to leave on the 3d. We had to encounter a great deal of disagreeable weather with bad roads and high water. We reached this place on the 16th of June, having lost four of the emigrants by death; a large number also being sick. I was instructed by the superintendent to furnish competent provisions to the emigrants up to the 5th of July, after which period it would be furnished under contract. The supplies furnished by contractors are of good quality. The emigrants have preferred receiving the larger portion

of their meat ration in stock cattle which has been encouraged by me, believing that it was much better for them to receive stock cattle than the beef slaughtered. The emigrants continue to suffer considerable from sickness; several of them have died since they reached this neighborhood; nor is the sickness confined to the emigrants alone, for the old settlers appear to suffer almost to as great an extent. The disease with which they are afflicted has assumed the typhoid character, and in many cases terminates fatally.

There appears to be the best feeling now existing between the Seminoles themselves and the neighboring tribes.

There is, however, very considerable excitement now existing on the frontiers of the Choctaws and Chickasaws, in consequence of the depredations perpetrated on them by the Comanches. This is a subject which has, no doubt, long since been reported to the department by the United States agent for those people, and also by the military commanders on the frontier.

I have just returned from the new Seminole country. I spent several days with Mr. Jones, United States surveyor, who was at the time of my visit, running the line dividing the Creek and Seminole nations. I found upon a personal examination, that the prejudice of these Indians heretofore, in regard to their new country, was not very well founded. It is true that in many places timber is scarce and indifferent, but I found plenty of timber except such as was suitable for boards, which is rather scarce. The soil is generally of a very good quality.

The number of Seminoles according to the census of last fall, including the emigrants who arrived from Florida the present season, is two thousand and sixty; of that number eight hundred and eighty-seven are females. They are generally engaged in agricultural pursuits and stock raising. Many of them have fine stock, from which in a few years they will receive a handsome profit. The change of their homes will for a short time operate somewhat against them. But the advantages of a fresh range for their stock, which they will secure by their removal, will, to a great extent, remunerate them for the loss they may sustain in their removal. The Seminoles are an industrious and well disposed people, when free from the baneful and pernicious influence of ardent spirits, which, I am sorry to say, they are not entirely exempt from. The use and abuse of intoxicating liquors is, however, of not very frequent occurrence lately, there being a manifest improvement in this particular among these people.

I regret that I cannot speak so favorably of the growing crops as I would wish. Owing to the almost continuous rains in the forepart of the season, by reason of which the usual and necessary amount of labor could not be bestowed on them, and the almost unparalleled drought since about the 15th of June, will cut crops of every description very short. Still I think, with proper economy in the use of the supplies that will be raised, with the assistance of a good mast, of which there is a fine prospect, together with the amount of hay secured by almost every one having a large number of stock, there will be no want of supplies for home consumption. There is a very evident improvement in the disposition of the Seminoles as regards the educa-

tional and moral condition of themselves and children. They evince generally a great desire to have their children educated, but have only one school to which they can send them, that is the mission at Oak Ridge, established by the Presbyterian Board of Foreign Missions in 1848, under the superintendence of the Rev. John Lilley, who by his industry and Christian example, has gained the confidence and good will of many of the most influential men of the nation; in fact the principal chief is one of the elders of the church, as well as one of the most liberal patrons of the school or mission. For the progress and other particulars of this institution I refer you to the report of the Rev. Mr. Lilley, which accompanies this.

The educational fund provided for by the eighth article of the treaty of August, 1856, being three thousand dollars annually for ten years, to be applied to such objects as the President shall direct, I would recommend its appropriation for the establishment of two manual labor schools, one for males and the other for females; giving to each half of the annual appropriation of said fund; and I would also recommend that the Rev. John Lilley should have charge of the female mission to be thus established. He is, from his long and intimate acquaintance with the Seminoles and their language, well calculated to supervise and render the service required of the superintendent of such schools. I consider the habits of industry, morality and knowledge imparted to students at schools of this character, when properly controlled and conducted, of far more value than all other educational knowledge that can possibly be imparted to an Indian. I would recommend that the Rev. John Lilley should have the management and oversight of the school for the education of the males, unless it should be thought advisable to have it conducted by some other denomination or society. This, I think, however, would tend to diminish the usefulness of the school, and greatly increase the expense of its establishment. The Seminoles, as far as I have learned, are very much in favor of Mr. Lilley, and I think he would be preferred to any one else.

I cannot too strongly urge upon the department the necessity of a speedy selection of a site and the erection thereon of suitable buildings for an agency, and also a council house for the Seminoles. This would, it is believed, be the means of causing them to remove and settle in their new country sooner than anything that could possibly be done. They frequently speak of this subject, and say that as soon as the site is selected and the buildings commenced, they must select their homes. I have no doubt but that, as soon as this is done, they will immediately move. The emigrants are likewise desirous that the assistance provided for by treaty may be furnished. In regard to the application of the means for that purpose, I would recommend that the funds be placed in the hands of the superintendent, subject to draft of the agent, in such sums as might be necessary in the progress of the work. I do not think the houses can be erected with due economy as regards the means or with security to the contractor, for the following reasons: first, the uncertainty at what time the labor would be required; secondly, scarcity of building materials in some localities, which must necessarily cause some of the cabins of the same

dimensions to cost from one-fourth to one-half more than others. In view thereof, I would recommend that authority be given the agent to contract for, separately or otherwise, the erection of such cabins as might be required. This could only be done after the site was selected by the Indians, and the materials for the construction personally examined. The objections here suggested do not so fully apply to the erection of the agency buildings, as almost all the materials except some heavy timber, will have to be procured either at Fort Smith or some other point equally remote. The Indians are desirous for the establishment of blacksmith shops provided for by treaty. I would recommend that authority be given for the selection of suitable sites, in order that they may be completed by the first of January next.

The military bounty land warrants forwarded to this office in January last, were not received until June, owing to my absence in Florida. They have not as yet been paid out in consequence of the general indisposition of the Indians. I understood, while at Fort Smith, that the goods for the thirteenth and fourteenth instalments, under treaty of January, 1845, had been received and in store, in charge of Messrs. Sutton and Spring; but owing to the want of funds to pay charges already incurred, as well as those that would be made in transportation, I deemed it advisable not to receive them until I had received the funds for that purpose.

It is very desirable that the guns and other articles provided for by treaty to all who should emigrate, be forwarded at the earliest convenience of the department. Major Rector, superintendent, who is now at the seat of government, has, I have no doubt, furnished a list of the number of warriors, and also of the women and children, so that I deem it unnecessary to forward one. This is a subject I would not have mentioned in this report, were it not for the almost daily importunity of the emigrants.

Very respectfully, your obedient servant,

SAMUEL M. RUTHERFORD,
United States Seminole Agent.

Major ELIAS RECTOR,
Superintendent Indian Affairs, Fort Smith, Arkansas.

No. 52.

OAK RIDGE, *August* 20, 1858.

DEAR SIR: I submit the following report of the manual labor school among the Seminoles at Oak Ridge. This school though not receiving its main support from government, yet being the only institution of the kind among the Seminoles, deserves on that account, if for no other consideration, to be noticed and reported. The school was commenced by the Presbyterian Board of Foreign Missions in 1848, and has been mainly supported by that board ever since. No other school has ever existed among the tribe. It has quietly gone on from year to year doing its blessed work, under God, of educating and enlight-

REPORT.

DEPARTMENT OF THE INTERIOR,
OFFICE INDIAN AFFAIRS,
November 26, 1859.

SIR: In compliance with custom and regulation, I have the honor to submit the following annual report on Indian Affairs for the present year, accompanied by reports of the superintendents and agents, to which I would refer for particulars respecting the present condition, progress, and prospects of the different tribes within our jurisdiction.

The amount applicable during the last fiscal year for fulfilling the stipulations of our numerous treaties with various tribes, and for other necessary purposes connected with our Indian policy, was $4,852,407 34. The amount drawn from the treasury, and paid and expended or remitted therefor, was $3,402,014 52. The amount of the estimates submitted to Congress for appropriations for the present fiscal year, was $2,575,271 94. The amount appropriated was $2,484,271 94, making applicable for expenditure during this year, including the unexpended balance from the previous year, and interest, amounting to $202,002 89 on trust funds invested in stocks, the sum of $4,136,667 65. The amount estimated as necessary for the next fiscal year, including the fulfillment of the stipulations of new treaties ratified by the Senate at the last session, is $2,505,990 38. Of these new treaties, twelve in number, ten are with fifty different tribes and bands in Washington Territory and Oregon, embracing about nineteen thousand Indians, and by which their title is extinguished to a very large extent of country required for the extension of our settlements in that distant but growing portion of our confederacy. It is estimated that 58,992,770 acres have thus been added to the disposable public domain, at a cost of about five and three fifth cents per acre; and it is believed that if the provisions and purposes of these treaties shall be properly and judiciously carried out, there will be no further recurrence of difficulties of a serious character with the Indians in that region.

The agent for the Indians remaining in the State of New York, reports favorably of their continued but gradual improvement. These Indians comprise the remnant left of the once famed and formidable confederacy of the Six Nations, whose dominion and despotic sway at one time extended from the shores of Lake Michigan to the Carolinas and from the Saint Lawrence river to the Wabash. Though much reduced in numbers, their decline in that particular has been far less than that of most if not all the tribes who have suffered the evils of continued removal from place to place as the white population has advanced. At the commencement of the war of the Revolution, they are estimated to have numbered not more than nine thousand. Their present population is about four thousand. They are comfortably

The efforts of the department to provide for the Christian Indians, as required by the act of June 8, 1858, have resulted in a conventional arrangement, by which they are confederated with the Swan Creek and Black river bands of Chippewas, in Kansas, and secured comfortable homes among these Indians.

The great southern tribes located west of Arkansas and Southern Missouri, continue to present in their orderly conduct, their regular, stable, and well administered governments, and in their general prosperity, the same marked and gratifying evidences of advancement and improvement that have so repeatedly been noticed in former reports.

The same policy which isolated the tribes in Kansas also placed these Indians separate and apart by themselves, but had they not become imbued with the impulse, and adopted many of the habits and pursuits of civilized life in their former southern homes, it is doubted whether they would now be any further advanced than when first removed. Civilization is not to be taught and acquired by precept alone, but mainly by practical example, and immediate and constantly recurring evidence of its blessings and advantages. Could there have been mingled with the tribes, so mistakingly isolated, an orderly, industrious, and enterprising white population, all theorizing speculation as to the best means of accomplishing their civilization, would, by this time, probably have been at an end. That desirable result would, at least, have been so far realized as to relieve us of our present anxiety concerning their future condition and welfare.

The flattering accounts in relation to the adoption by several of the northern tribes of Indians, of the plan of allotments to them in severalty of a portion of their tribal country, has induced this office to suggest to the superintendent of the southern superintendency, that the fact be communicated to the Indians within his district with a view to the consummation of a similar policy among them. Such a system could very well be administered and carried out by the Indians themselves, with a little assistance from the government. It would be necessary that their lands should be regularly surveyed upon the same plan as those of the United States: this being done, it would be advisable for them to select reservations for themselves, which would at once give to all classes an idea of separate property in lands, and, in my judgment, stimulate them to greater exertions to become practical agriculturists, and they would progress more rapidly in all the arts of civilization. Thus, too, a prosperous and thriving community would be formed, which would soon be in a condition to come in closer contact with the white race.

The removal of the remaining Seminoles from Florida, with the exception of the aged Chief, Sam Jones, and a very small number of his personal adherents, was successfully accomplished last spring, by Superintendent Rector, who was charged with the execution of this onerous and difficult duty. After his return from Florida, that officer, under instructions from the Department, made an exploration of the western portion of the Choctaw and Chickasaw country, lying between the 98th and 100th degrees of longitude, for the purpose of selecting a site for an agency and suitable locations for the Wachita and other Indians; for whose accommodation that strip of country was leased from

the above-mentioned tribes by the treaty of 1855. A special report, giving an interesting account of his expedition, and describing the locations selected by him for those purposes, is herewith submitted. His selections appearing to be suitable and proper, and the best that could be made within the strip of country to which they had to be confined, have been confirmed, and the Wachitas and a number of other Indians removed there, including those from the two reservations established in Texas a few years since, whom the Department thought proper to transfer beyond the limits of that State, to prevent their extermination by bands of persons organized for the purpose.

Superintendent Neighbors, on his way back from removing these Indians to their new homes, I am sorry to state, was murdered by some person or persons, whose vengeful animosity, it is supposed, he had incurred by his zealous and uncompromising efforts to protect the Indians and their property from wrong. Copies of papers giving an account of this tragic and lamentable occurrence, and of the circumstances under which the removal of these Indians became necessary, are herewith submitted.

It was stated in the report of last year that, in order to complete the colonization of the Indians in Texas, it was contemplated to establish a third reservation there, for which authority had been given by Congress, but that body, at its late session, prohibited the expenditure of any part of the appropriation then made for the service in Texas for that object; and, in view of the circumstances which compelled the breaking up of the other reservations, all further efforts to colonize the Indians there should be abandoned.

From the reports of the superintendent and the agents in New Mexico, the condition of Indian affairs in that Territory seems to be gradually improving; though that populous and warlike tribe, the Navajos, continued to act in bad faith, and will, probably, have to be more thoroughly chastised, in order to impress upon them a proper sense of their treaty obligations, and to compel them to desist from the continued depredations and outrages upon our citizens.

It also appears that there have been difficulties between some of the emigrants to the new mining region and a portion of the Utah tribe of Indians in the northern part of the Territory, resulting in the loss of life on both sides; but, all the circumstances considered, it is only a matter of surprise that such casualties have not been more frequent since the commencement of the great influx of the whites into that region of country.

Superintendent Collins, in accordance with instructions from this office of the 18th of May, 1859, accompanied the Honorable John S. Phelps, of Missouri, who was joined by Colonel Bonneville, Captain Granger, Captain Hatch, Captain Claiborne, and Lieutenant Jackson, of the army, with 180 men, as far as Utah creek, which empties into the Canadian river, with a view to hold a talk with the Comanches. Notwithstanding every effort was made to induce the Indians to remain in camp until their arrival, and every assurance given as to the friendly object of their visit, they broke up their camp in great confusion and fled in the direction of the Salt Plains in the north. For a detailed

to Congress for its approval. The regulations contemplated by the act referred to are in course of preparation, and will be ready for submission at the convening of Congress. The many defects in the present intercourse law have made it necessary to bestow much time and reflection as to the required remedies, so as to obviate, if possible, any further amendments in the future. The present law, enacted in 1834, was eminently proper at that date; but the numerous changes that have taken place in regard to our Indian policy required rules that are adapted to the present condition of affairs, as well as the rapid advance many of our Indian tribes are making in civilization.

Among the accompanying papers will be found the usual annual statement of Godard Bailey, disbursing clerk, with schedules exhibiting the condition of the Indian trust fund.

Very respectfully, your obedient servant,

A. B. GREENWOOD,
Commissioner.

Hon. J. THOMPSON,
Secretary of the Interior.

List of documents accompanying the report of the Commissioner of Indian Affairs for the year 1859.

NEW YORK AGENCY.

No. 1.—Report of Bela H. Colegrove, agent for the Indians in the State of New York.

MICHIGAN AGENCY.

No. 2.—Report of A. M. Fitch, agent for the Indians in the State of Michigan.

AGENCY FOR THE INDIANS IN THE VICINITY OF GREEN BAY.

No. 3.—Report of A. D. Bonesteel, agent for the Indians in that vicinity.
No. 4.—Report of E. A. Goodnough, teacher to the First Christian party of Oneidas.
No. 5.—Report of Sarah J. Stingerland, teacher to the Oneidas.
No. 6.—Report of David Lewis, teacher to the Oneidas.
No. 7.—Report of Jeremiah Stingerland, teacher to the Stockbridges and Munsees.
No. 8.—Report of Orlin Andrews, teacher to the Menomonees.
No. 9.—Report of Rosalie Dousman, teacher to the Menomonees.
No. 10.—Report of Friedrich Haas, farmer to the Menomonees.
No. 11.—Report of Ignatius Wetzel, blacksmith to the Menomonees.
No. 12.—Report of Samuel J. Litch, miller to the Menomonees.

NORTHERN SUPERINTENDENCY.

No. 13.—Report of W. J. Cullen, superintendent.
No. 14.—Report, special, of Superintendent Cullen.
No. 15.—Report of J. W. Lynde, agent for the Chippewas of the Mississippi.
No. 16.—Report of John V. Wren, physician to Chippewas of the Mississippi.
No. 17.—Report of C. K. Drew, agent for the Chippewas of Lake Superior.
No. 18.—Report of Rev. L. H. Wheeler, missionary to the Chippewas of Lake Superior.
No. 19.—Report of Joseph R. Brown, agent for the Sioux of the Mississippi.
No. 20.—Report of J. W. Jenkins, superintendent of schools for the Se-see-toan and Wah-pay-toan bands.
No. 21.—Report of S. Brown, superintendent of schools for the Med-a-way-kan-toan and Wah-pay-koo-tay bands.
No. 22.—Report of J. W. Cullen, superintendent of farms for the Med-a-way-kan-toan and Wah-pay-koo-tay bands.

is the way to do it. As proof of the correctness of this position, we need only refer to the history of events as they occurred among the Creeks and Cherokees before their final removal to this country. But, if the desire is (as our government has most conclusively shown) to improve their condition physically, morally, and intellectually, in the best possible manner, then let them keep their lands, aid and encourage them in every possible way in educating the rising generation, and send them faithful and intelligent missionaries to instruct them from the Word of God. Then they must, they will improve, and become an enlightened, Christian nation; and, in due time, we shall hear them knocking at the doors of our Union for admittance as a State.

Yours, respectfully,

R. M. LOUGHRIDGE.

W. H. GARRETT, Esq., *United States Agent.*

No. 57.

ASBURY MANUAL LABOR SCHOOL,
Creek Nation, September 16, 1859.

SIR: In compliance with the requirements of your office, I submit the following report of the school under my care:

The last session commenced on the 20th of September, 1858, and closed on the 24th of June, a few days earlier than usual, on account of whooping-cough among the children. The session, all things considered, was one of about usual interest and success. The attendance throughout was good. Most of the pupils made very commendable progress in their studies, considering that many of them were small, speaking the English but little, and that very imperfectly. A great hindrance this, for a time, to the more rapid progress of all full-blood Indian children, whatever their capacities may otherwise be for improvement. Another thing: books and study are new things to them—things hard for many of them rightly to familiarize themselves with; which is only accomplished by a great deal of labor and patience on the part of teachers. A great difficulty is to get them to understand what they read and what they write. The brief examination had at the close of the session embraced studies in spelling, reading, mental and higher written arithmetic, Quackenbos's first lessons in English composition, English grammar, and declamation. At the close, suitable prizes were awarded to those who had acquitted themselves best. A number of religious books were also distributed amongst them, for their encouragement. Many of the more advanced could answer a large number of Bible questions, put to them promiscuously. The Sabbath school, with us, is one of great interest.

The farm, &c., I have so often referred to in my quarterly reports, that I need but say that we have quite an abundant crop of corn, &c.

Yours, most obediently,

THOS. B. RUBLE,
Superintendent A. M. L. School, Creek Nation.

W. H. GARRETT, Esq.,
U. S. Agent for the Creek Indians.

No. 58.

NEW SEMINOLE AGENCY,
August 29, 1859.

SIR: I have the honor to submit the following as my annual report, showing the condition of the Seminole tribe of Indians, in compliance with the regulations of the Indian Office:

No very material change has taken place among these people, either in their moral or physical condition, since my last report, and but little disposition manifested to the advancement of refinement and civilization, except by a few. They have enjoyed remarkably fine health during the past year, having been visited by no contagious affection, and, in fact, the diseases prevalent generally throughout the nation are mild in their grade and character. The number, according to the recent census, including the Florida and Mexican emigrants, amounts to 2,253: of that number 1,009 are females. The men are generally engaged in agriculture and stock raising; the women, in the ordinary routine and duties of housewifery. Their prospects for good crops are quite flattering. About one third have removed and settled in their new country, have erected comfortable cabins, cleared and put into cultivation small fields, and appear to be well satisfied with their change of homes. The remaining portion, with the exception of the Florida emigrants and a few others, have assured me that they will move to their new homes as soon as they shall have gathered their crops. The Florida emigrants still appear much dissatisfied, and it is impossible to surmise what course they may finally pursue or adopt. The Seminoles appear to be upon very amicable terms with the neighboring tribes, their mutual transactions having been so far harmonious. One circumstance, however, occurred last spring, which, for a short time, created considerable excitement, and had the appearance of bringing the highly exasperated parties (Choctaws and Seminoles) in collision. A difficulty took place in a carouse or drinking spree, in the Choctaw country, in which three Seminoles were killed, it is said, and I suppose truly, one of them by a white man. This caused the Seminoles to manifest considerable hostility, and a spirit of retaliation towards the whites, until a white man, peaceably driving his wagon through the Seminole settlements of the Creek country, was killed, and evidently by a Seminole, since which time they have appeared better satisfied and reconciled towards the whites. No certain evidence as to the individual committing the murder has yet been obtained, but very suspicious circumstances, enough so to cause the arrest, by the United States marshal, of the supposed murderer, which took place during the annuity payment, a few days since, upon a demand made by me upon the principal chief. The day previous, the marshal had arrested an adopted citizen of the Seminoles for an infraction of the intercourse law, which caused the most intense excitement, and for a while threatened the most disastrous results. The Seminoles protested against the power of the United States, through the marshal, to arrest any person in the limits of their country, *for any offense whatever*, without making the demand through the agent upon the authori-

ties of the nation; and, notwithstanding they were told of the exclusive jurisdiction that the United States claimed any and everywhere throughout the Indian country, they still adhered to their self-conceived right, and stated, that should the marshal ever make another arrest, without first informing them through the medium above stated, they would take his life, whatever the consequence might be, and that would lead to the killing of all white persons living among them, even those whom they had previously regarded as their friends. In view of the condition of affairs of the Indian country, and particularly that of the Seminoles, I regard the establishment of a military post indispensable, and necessary for the protection and security of persons living in and traveling through their country; also, to maintain the supremacy of the laws of the United States. I trust you will, as you have heretofore done, recommend and call the attention of the department to the importance and necessity of the establishment of said post.

The payment of the annuity, and the distribution of goods for the Seminoles, commenced on the 22d, and closed the 26th instant. All appeared to be perfectly satisfied with the payment and the distribution of goods. Objections were made in regard to the operation of your instructions on future payments. They contend that they have the right to live in the Creek country and participate in the benefit of the annuities to the same extent as though they were living in their own country. The agency building, with the outbuildings, is rapidly progressing, and will be completed in a very short time. They appear to be erected in a substantial and workmanlike manner. The council-house has not, as yet, been contracted for; some preliminary steps, however, have been taken towards its erection. The new agency is sixty miles west of the former agency, about one mile west of the eastern boundary of the Seminole country, and about two miles north of the road recently laid out by Lieutenant Beale. The reserve embraces good land, timber, and water, and is believed to be a very healthy location.

On the subject of education, but little interest is manifested, except by a few, who are very anxious that the means to which they are entitled under treaty stipulations should be made available as soon as possible. They generally concur in the mode of its applications, to wit: the establishment of a manual labor school in the new country, under the supervision and control of the Presbyterian Board of Foreign Missions, upon similar conditions to those entered into for the establishing of the Tallahassee and Asbury manual labor schools among the Creeks. Regarding this subject of much interest, and of paramount importance to the Seminoles, I cannot refrain from again calling the attention of the department to it through you.

At present there is no school in the Seminole country, nor are there any prospects of any being established, until the application of the means above referred to shall have received the sanction of, and been authorized by, the department. The only school ever established for the benefit of the Seminoles was the Oak Ridge mission, or manual labor school, established by the Presbyterian Board of Missions in the Seminole country, under the superintendence of the Rev. John Lilley. This institution has been of much benefit to the Seminole

people, in educating and instructing their children, mentally, morally, and physically. The superintendent, with his family and assistants, is very favorably regarded by the people, and with the patrons of schools they stand deservedly high. For further particulars, I refer you, with pleasure, to the accompanying report of the Rev. John Lilley.

By the treaty of August, 1856, two thousand dollars per year, for the period of ten years, was stipulated for agricultural assistance. The Seminoles are exceedingly anxious to know the kind of assistance here alluded to. They are very desirous for a sufficient amount to erect some two or three mills, for the grinding of corn, and the manufacture of flour, in their new country. On the 26th of May last, I had the honor of calling the attention of the department, through you, to this subject. I have not, however, received any reply to the communication above referred to. I would therefore beg leave again to call your attention, and that of the department, to this subject. I believe that the expenditure of the amount necessary for the construction of one or two mills, (horse-power,) for the grinding of corn and the manufacture of flour, would be of more benefit than the same amount would be if otherwise applied.

The traffic in whisky is still carried on to some extent by the Seminoles and other evil disposed persons, much to their injury, as well as to the great annoyance of those living among them, and I apprehend will be to a greater extent in their new country than it was while living under the Creek laws. The Seminoles have no national fund to defray the expenses of a government; consequently, there must be great laxity in the execution of the laws.

At a general council, recently held by all the chiefs and head men of the nation, it was unanimously agreed that they would make application, through you, to the department, or President, to permit such a sum, as they might find necessary to defray the expenses of their government, to be withheld or withdrawn from their annuity, and turned over to the nation, to enable them to defray the expenses of their government. They want an efficient *light-horse* to execute their laws. If they expect them to perform their duty, they must be paid. Their chiefs and law-makers expect some remuneration. Means are wanting for many other purposes, in the administration of a government, however limited. I fully concur with them in the necessity of allowing such a sum as may be found necessary to defray the expenses of a government, to be withdrawn from their annuity, and turned over to the nation, for the object above stated. It is a fact well known to all conversant with the disposition and habits of Indians, that *per capita* payments do not advance the interest or prosperity of Indians, but, to the contrary, is generally a disadvantage and an injury. I hope, therefore, this subject may meet with your approbation and that of the department. As soon as I shall be furnished with the amount considered necessary, it will be specially reported.

Very respectfully, your obedient servant,

SAML. M. RUTHERFORD,
U. S. Seminole Agent.

ELIAS RECTOR, Esq.,
Sup't Indian Affairs, Fort Smith, Arkansas.

STATEMENT OF MR. JAMES BILLIE, CHAIRMAN
TRIBAL COUNCIL OF THE SEMINOLE TRIBE OF FLORIDA
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS
ON S.1096 AND S.1336

Mr. Chairman and Members of the Committee:

My name is James Billie. I am Chairman of the Seminole Tribe of Florida. With me this morning are Jim Shore, a member of our Tribe and the Tribe's general counsel and Jerry Straus, our Washington legal counsel. They will assist me in answering any technical legal questions on my statement. On behalf of my Tribe, I would like to express appreciation for the opportunity to present our views on the proposed division of the $16 million judgment awarded by the Indian Claims Commission to the Seminole Nation as it existed in Florida in 1823.

Mr. Chairman, the history of the Seminoles is a tragic history. Both the Florida and Oklahoma Seminoles have endured the loss of their Florida homeland and over a century of grinding poverty. Those of us who resisted removal to Oklahoma and remained in Florida by avoiding the federal soldiers and hiding out in the Everglades, were virtually ignored and left to fend for ourselves in a hostile environment far different from our traditional homeland to the North in Florida. It is only in very recent years that we have been able to improve the economic lot of our people through tribal business ventures.

Those of us who accepted the forced removal to Oklahoma, who received treaty benefits and a new land base in return for the lands lost by all, suffered the hardship of the long march to Oklahoma and later suffered from the now discredited policy of allotment which destroyed the tribal estate in Oklahoma while failing to provide sufficient protection for individual Seminoles who received the allotted tribal lands.

While we in Florida have a sharp disagreement with our Oklahoma brethren over the division of the Claims Commission's award, we have not lost sight of the fact that we are all one people. We have always been willing to work out a compromise and we have come close to an agreement on a division several times in the past. Each time, for various reasons, it has eluded us. As a result of recent informal preliminary discussions we have had with some of our Oklahoma brethren, we believe that it still may be possible in a relatively short time -- without any prejudice to the possibility of legislative disposition by the 101st Congress in its present Session or early in the next Session -- to have agreement reached by the two groups. We think the parties should be given one more chance to work this out before Congress imposes a solution that may be acceptable to neither group and that is certain to create bitter feelings on one side or the other. Specifically, we request that the record of this Hearing be kept open for thirty days and that the parties be directed to report back to the Committee on the progress, if any, of negotiations at that point. If negotiations fail again, we agree that the time has come for Congress to act.

I would like to note at this point that the present day population of the Oklahoma and Florida groups cannot provide a fair basis for population division of the award. The Department of the Interior itself, which advocates a straight population division, has recognized that given the disparate blood-quantum standards for membership of the Oklahoma and Florida Seminoles, any division of the award based upon present day population figures would be highly inequitable. In an effort to avoid that inequity, the Department of the Interior proposed a division based on censuses conducted in 1914 for Florida (with adjustments) and 1906 for Oklahoma. This produced the 75 percent/25 percent proposed split, which is now accepted by the Oklahoma group.

We strongly believe that the 75/25 percent split proposed by the Bureau of Indian Affairs and endorsed by the Oklahoma group, using a reconstructed 1914 Florida census and a 1906 Oklahoma census to derive the percentages, is arbitrary and inequitable. The only justification advanced for the use of these censuses is that they are the earliest existing censuses of the two groups which have any asserted validity. But even if it is assumed that these censuses are valid, and are accurate for their dates -- which we doubt -- this does not mean that they have any logical connection to the question of how the award should be divided based upon events that transpired in the century before. In other words, the censuses which are used to make the proposed population division, have no connection to the claim which gave rise to the award.

The Oklahoma group has argued that the proposed 75/25 percent split is overly generous to the Florida group and that it would be more appropriate to pick a date closer to the transactions involved in the claim to determine relative populations. They believe that an earlier date would produce a much greater share for Oklahoma. We agree that it makes much more sense to use an earlier date than the arbitrary 20th Century dates selected by the Bureau of Indian Affairs, although, as covered later in my testimony, we also believe that any population division should be adjusted to reflect the difference in treatment between the two groups with respect to administration of the treaties and payment of consideration for loss of the tribal estate in Florida.

Contrary to our Oklahoma brethren, we believe that a properly constructed census of an earlier date, such as 1860, when the emigration to Oklahoma was essentially complete, would show a much greater share of Seminoles remaining in Florida than has been supposed. We believe that the true facts, once they are determined, should guide the result.

In 1978, at the Hearings held by this Committee, the Seminole Tribe proposed that the extremely complex factual matters in dispute on the division of this award be submitted to an impartial judge for resolution.

Congress has not moved forward on our suggestion or any of the other alternatives that have been suggested for a number of reasons. First, until this year, there has been deep disagreement

between branches of the Oklahoma Seminole group. Under the BIA recommendations in the past, previously endorsed by the Oklahoma group as a whole, the Seminole Freedmen would not be entitled to share in the award because benefits from it would be restricted to those of Seminole blood. That issue has now been resolved in the present bill by removing the Seminole blood restriction for participation in benefits deriving from the share awarded to the Semimole Tribe of Oklahoma as one of the successor tribes to the original Seminole Nation in Florida.

As for the division between Oklahoma and Florida, there have been a number of negotiations over the years which have failed for one reason or another, although all involved agree that a negotiated solution is the best of difficult alternatives. While, as I have indicated above, we think the parties should be given one more chance before a legislative solution is imposed, our view is that a solution should not be arbitrarily imposed. As we proposed in 1978, it should be accomplished by reference to an impartial judge who can assure that the award made to the Seminole Nation as a whole is fairly divided among the progeny of that nation. Draft language to accomplish this is attached to my statement.

Mr. Chairman, at this point I would like to say something more about our request that any division by population be adjusted to reflect treaty consideration which was deducted from our claim and other benefits arising from the treaties which were enjoyed only by our Oklahoma brethren.

While the United States virtually ignored the Florida Seminoles until the 1930's, it provided the Oklahoma Seminoles with a valuable land base and other treaty consideration pursuant to the 1832 Treaty, which was an integral part of the claim which gave rise to the award we are now disputing. The Oklahoma Seminoles received a reservation worth over $2,094,000 which was deducted from the total award as a "payment on the claim" as well as other related treaty payments in excess of $2 million which were not deducted. This is fully documented in the legal memorandum prepared by our attorneys, which is attached to my statement. None of these benefits were available to those who remained in Florida, even though we suffered at least as much from the loss of the homeland we all once enjoyed together.

Our attorneys have advised us that because the joint claim was brought on the theory that the 1823 Seminole Nation received "unconscionable consideration" for the cession of our homelands, the litigation and the negotiations which concluded it were to determine the difference between what our land was worth at the time it was lost and the actual consideration paid for it. As a result, consideration in the form of Oklahoma land that was provided only to the Oklahoma group, pursuant to the 1832 Treaty, which the Indian Claims Commission ruled had a value of approximately $2 million, was necessarily deducted in determining the additional consideration presently due.

The Oklahoma Seminoles apparently dispute that the award of $16 million that was finally negotiated reflects a deduction for Treaty consideration paid. On the contrary, as demonstrated in the attached legal memorandum prepared by our attorneys, the payment of the Treaty consideration to the Oklahoma group diminished the final award that is the subject of the present dispute.

The Oklahoma group is also in error in suggesting that Indian claim awards are always distributed on the basis of "descendancy", i.e., distributed on the basis of poplation among the descendants of the original group of people who were alive at the time the claim arose.

While it is true that in many cases Indian claims judgments have been divided solely on the basis of descendancy from an ancestral group, this is certainly not always the case. Where there are successor tribes, judgments have almost invariably been distributed to the successor tribes rather than to all descendants. In most cases, where there is more than one successor tribe or group, this has been done by agreement. Where no agreement is reached, other factors are considered. For example, one case involved the disparity between one Indian group which had and one which had not received a reservation under a particular treaty that gave rise to a claim. This disparity was dealt with in the Judgment division by increasing the share of the non-reservation group (see Shoshone Tribe Distribution Fund Act of December 18, 1981; 85 Stat. 737; 25 U.S.C. 581-583, House Report No. 92-701 92 Cong., 1st Session).

It is significant that the present Oklahoma bill does not itself strictly follow a descendancy approach because it disregards "descendancy" in its treatment of the Oklahoma share.

S.2150, the bill proposed last year by the Oklahoma group in the 100th Congress, did follow the "descendants" approach in the division between Florida and Oklahoma and also as to the utilization of the Oklahoma share. It was provided in the bill that the Oklahoma funds were to be used for the benefit of persons of "Seminole blood." This was intended to exclude any sharing by the Oklahoma Seminole Freedmen who, while members of the Seminole Nation of Oklahoma, have no Seminole Indian blood, and are not descendants of the members of the Seminole Nation existing in Florida in 1823.

S.1096, the present Oklahoma bill, significantly departs from this "descendants" approach. Specifically it states that the Oklahoma share will be held in trust for the present-day Seminole Nation of Oklahoma to be invested or used for the "common needs, educational requirements, and other long-term economic and social interests of the Tribe," without the blood restriction described above. The net effect of this is that the Oklahoma Seminole Freedmen would fully participate in the benefits of the award even though the 1977 BIA results of Research Report (at p. 11) concluded that their ancestors were not part of the Seminole Nation in 1823 and that they were <u>not</u> entitled to participate in the award.

We are not saying that the decision to include the Freedmen in the benefits of the Oklahoma share of the Judgment is incorrect. That is a matter for the Oklahoma group to decide. We are saying that a "descendants" approach is not invariably followed for various reasons and, in fact, the present Oklahoma bill itself departs from a descendancy standard in providing for distribution of the Oklahoma share. We think the reasons we have advanced for a departure from a strict descendancy standard in calculating the Oklahoma/Florida division are equally compelling.

Turning to the division of the Florida share, we wish to call the Committee's attention to one final problem. Under S.1336, a specific pre-determined percentage share is allocated to the Seminole Tribe of Florida, the Miccosukee Tribe, and the Independent Seminoles. We believe the numbers proposed, which were furnished by the Bureau of Indian Affairs, and are based upon the relative percentages of population of the three groups in a 1957 Agency census and which have not been objected to by any of the groups, are the best way to divide the Florida share and to preclude the possibility that persons yet unidentified would come forward to assert that they are in fact entitled to share in the Florida portion of the award because they are of Seminole descent. Under the language of the Oklahoma bill, S.1096, there is no provision that gives protection against this, since the bill only provides that, in addition to the Miccosukee and Seminole Tribes, the "unaffiliated Seminole Indians of Florida" shall share without defining them.

In our view, if Congress is going to make a finite division between Oklahoma and Florida -- either with or without legislative reference for impartial fact finding we have recommended -- it ought to also define with some particularity, the number of unaffiliated people who can share in the Florida portion so that the Florida share is not diluted by the inclusion of persons who are not counted or whose ancestors are not counted in the division between Oklahoma and Florida. (We note that there is no similar problem in Oklahoma since the Oklahoma share will go entirely to the Seminole Nation of Oklahoma rather than to individuals who might claim Seminole descent and who may reside in Oklahoma).

The possibility of yet unidentified persons claiming a share of the award is not a matter of idle speculation on our part. Just last year a group denominating itself the Oklewaha Band of Seminole Indians wrote to the Congress and asserted that they were fully entitled to share in this award (see attached letter to Senator Inouye, dated July 26, 1988 from Betty Little Dove (Ghigua) Buford). While we do not think there is any merit to the Oklewaha Band's claim, at this point no one knows for sure whether in fact they will assert an interest in the judgment.

At the very least we suggest that if the proposal for specifying the shares of each group in Florida is not acceptable, that Congress more precisely define the test for entitlement as an

independent Florida Seminole. We suggest the following test to be stated in the legislation as follows:

> Unaffiliated Seminole Indians of Florida are unenrolled Seminole or Miccosukee Seminole Indians of Florida, as individuals whose names are found on or who derive from the 1957 Seminole Agency census and who are not enrolled with the Seminole Tribe or the Miccosukee Tribe on the effective date of this Act.

Frankly, we think that, in view of the thirteen years that have intervened since the Seminole judgment became final, and the public airing that the issues involving the distribution of the award have received in that time, any individual who cannot qualify as a Florida Seminole under our proposed test should not be allowed to claim entitlement now or in the future.

The claim before the Indian Claims Commission is the only claim the Florida Seminoles have ever had against the United States. We know that a long time has passed since the award was made and it is regretable that controversy over its division is still continuing. While the time has come to bring that controversy to a close, if agreement still proves impossible, we earnestly hope that Congress will fashion a remedy that is fair to all.

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September 13, 1989

MEMORANDUM

TO: Senate Select Committee on Indian Affairs

FROM: Hobbs, Straus, Dean & Wilder
Attorneys for the Seminole Tribe of Florida

RE: Payment of Consideration under 1832 Treaty and Other Treaty Payments to Oklahoma Seminoles

1. Payments on the Claims

The Seminole Indians of the State of Florida and the Seminole Nation of Oklahoma filed "wholly overlapping claims for compensation" in the Indian Claims Commission for aboriginal lands taken by the United States under provisions of the Treaty of Camp Moultrie, September 18, 1823, 7 Stat. 224, and reservation lands ceded by the provisions of the Treaty of Payne's Landing, May 9, 1832, 7 Stat. 368. These overlapping claims were consolidated for all purposes. (Seminole Indians v. United States, 13 Ind. Cl. Comm. 326 (1964), 38 Ind. Cl. Comm. 62 (1976)) so that the claim for additional compensation under both the 1823 and 1832 Treaties could be handled as one claim.

In its decision of June 28, 1968, 19 Ind. Cl. Comm. 179, the Commission defined the boundaries of 1) Seminole aboriginal title land and 2) the reservation that remained after the 1823 Treaty. In a later decision, 23 Ind. Cl. Comm. 108, the value of each of these tracts was determined by the Commission on the basis of the same physical evidence (climate, soil, etc.) and expert witness evidence covering the 1820's and 1830's. The Commission's Finding No. 61 determined that approximately $2,094,000 was paid for the reservation ceded under the 1832 Treaty.[1/]

The Commission then found that there were certain payments which the United States had made to the Seminole Nation which it was required to deduct from the determined fair market value of the land as "payments on the claim" under Section 2 of the Indian Claims Commission Act:

> "... the [1832] payment of $2,094,809.39 for lands having a fair market value of $2,050,000.00 was not unconscionable, and on this count the plaintiffs will recover nothing." 23 Ind. Cl. Comm. at 113.[2/]

1/ 23 Ind. Cl. Comm. 108, 132

2/ To round out the picture, it should be noted that in its findings, the Commission found the true value of the land ceded in 1823 to have been $12,500,000. 23 Ind. Cl. Comm. at 133. From this the Commission deducted $152,500 as payments on the claim and made a gross award on the 1823 Treaty claim of $12,347,500 Id. at 113.

Section 2 of the Indian Claims Commission Act makes a distinction between "payments made by the United States" on the claim which "shall" be deducted by the Commission and gratuitous expenditures for the Indians which the Commission "may set off" or offset if warranted by the entire "course of dealings" between the parties.[3/] The Comission after adjudicating mandatory payments on the claim, was well aware of this distinction when in October, 1970, it finalized the award by considering the Government's claims for various gratuitous expenditures. It rejected most of the government claims for gratuitous discretionary offsets, but allowed set-off of the value of certain land purchases against the previously determined recovery in the amount of $84,719.37. 24 Ind. Cl. Comm. 1 (1970). With two Commissioners dissenting, the Commission rejected the plaintiffs' argument that the Government's treatment of

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3/ Section 2 of the Act, 25 U.S.C. 70a (1963), provides as follows:

> "In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, ... the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures made to the claimant ... ." (emphasis added).

the Seminoles was such that it did not "in good conscience warrant" set-off of any gratuities within the meaning of Section 2 of the Indian Claims Commission Act. The final Order was appealed by both parties. The Court of Claims remanded the case to the Commission "to supply more specific findings and reasoning as to the valuation of the tracts involved in this case." 197 Ct. Cl. 350, 353 (1972).

Settlement negotiations commenced at that point and ultimately a compromise settlement was reached on the basis of which judgment was entered in the amount of $16,000,000 or $4 million more than the award earlier made by the Commission which was the subject of the appeal.

The documents of record indicate clearly that the compromise settlement disposed of both the 1823 and 1832 claims but give no indication of how the additional $4 million was specifically related to the two treaty claims.

But even if some portion of the $4 million addition is presumed to have been allocated to the 1832 Treaty claim, raising the determined value of the reservation land that was ceded in 1832, this does not negate the fact that the Oklahoma Seminoles received $2+ million in the form of land in the 19th Century, pursuant to the Treaty, and that payment was necessarily reflected in the final award under the underlying theory of the case. Stated otherwise,

even if the entire adjustment of the award after remand related to the 1832 Cession, the net award of $16 million had to reflect the deduction for a payment on the claim that the Commission had made pursuant to direction of the Indian Claims Commission Act.[4/] This was conceded by Mr. Niebell, one of the negotiators of the settlement, in his memoranda of June 17, 1988 (relevant pages attached) in which he describes the $16 million negotiated settlement as a "net payment for the Cession of the Florida lands." (emphasis added) Alternatively, he stated:

> "The award in the Seminole Florida claim represented the additional payment for the lands in Florida that the Seminoles had ceded to the United States in the Seminole Treaties of September 18, 1823, 7 Stat. 224, and May 9, 1832, 7 Stat. 368." (emphasis added)

We submit it is clear that the $16 million award represented the value of the land involved in both the 1823 and 1832 Treaties after deducting $152,500 consideration for the 1823 Treaty and $2,094,809 for the 1832 Treaty. Assuming that the $152,500 was expended for the benefit of the Seminole Nation before the forced migration, the

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4/ If it is presumed, to the contrary, that none of the additional $4 million was related to the 1832 Cession but related only to the 1823 Cession, the result is still the same. In that instance,it would follow that nothing was received under the 1832 Treaty portion of the claim because adequate consideration was paid under the Treaty -- consideration which undisputably was paid to the Oklahoma group alone.

entire Nation benefitted from that consideration, and it is not an issue here. But Treaty consideration including land, paid to the Oklahoma Seminoles for Florida land worth $2,050,000, benefitted only the Oklahoma Seminoles. At a minumum, a portion of the value of the Seminole homelands as of 1832 should be credited to the Florida Seminoles using the same ratio as may be determined to govern the division of the award, and the division of the entire award should be adjusted accordingly.

2. Other Treaty Payments to the Oklahoma Seminoles[5/]

In addition to the compensation in the form of lieu lands which the Oklahoma Seminoles received for the Florida 1832 Reservation and monetary payments provided for in the Treaty of May 9, 1832, 2 Kapp. 344, the Oklahoma Seminoles enjoyed the sole benefit of additional monetary payments for the 1832 Cession made pursuant to subsequent treaties.

The Seminole Treaty of 1832 does not fit the mould of the usual treaty of cession considered by the Indian Claims Commission

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5/ Attached are pages 42-44 of Hearing before United States Senate Select Committee on Indian Affairs, 95th Congress, 2nd Session on Distribution of Seminole Judgment Funds. (1978 Hearings) Pages 42-43 provide a descriptive list of the

(Footnote continued on next page)

in numerous claims. The usual treaty recited consideration in dollars and sometimes in lieu land. If lieu lands were involved, the Commission, as it did here, determined the value of the lieu lands at the time of the treaty to determine consideration. In this case, the negotiations remained open over a period of years, at least 1832 through 1856, and the consideration under the Treaty was not provided until years after the Cession occurred.

In that period, the negotiations were really three-sided because Creek lands were involved. The original plan was to merge the Seminoles into the Creek nation (1832 Seminole Treaty Art. I; Creek Treaty of February 14, 1833, Art. IV, 2 Kapp. 388). In 1845, in an effort to induce more than a trickle of Florida Seminoles to emigrate to Creek Territory, the Seminoles were assured of some local autonomy, immediate payment of monetary consideration promised in 1832 plus additional funds and services. (Creek/Seminole Treaty of January 4, 1845, 2 Kapp. 550). The 1845 Treaty failed to satisfy either Creeks or Seminoles.

By the Creek/Seminole Treaty of August 7, 1856, 2 Kapp. 756, the United States agreed to place the Seminoles on their own

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(Footnote continued from previous page)
treaties discussed in this section. Page 44 contains a portion of the GAO Report filed in Seminole Nation v. United States, Court of Claims No. L-51 dealing with these same treaties. (GAO Report).

land and to pay the Creeks $1,000,000 for ceding it for that purpose. To aid the Oklahoma Seminoles in moving to this new reservation and to induce the Florida Seminoles to join them there, the treaty provided additional funds, including $500,000 to be invested at 5 percent with only the annual interest subject to disbursement.

As discussed above, the Indian Claims Commission determined that the 1856-created Seminole Reservation in Oklahoma was consideration for the 1832 cession. 23 Ind. Cl. Comm. 108, 132 While the Commission did not accept the increased and added cash payments specified in the 1845 and 1856 Treaties as "payments on the claim," there is no doubt that these were payments made in an ongoing effort to acquire the Florida Seminole Reservation lands free and clear of Seminole use and occupation. It is undisputed that all of those benefits were enjoyed only by the Oklahoma Seminoles.6/

The Oklahoma Seminole Reservation set aside under the 1856 Treaty, which was the major compensation for the 1832 Florida

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6/ Some of the additional funds were earmarked to compensate Oklahoma Seminoles, early emigres who had settled in Creek land and were forced by the new treaty to relocate. But it is apparent that the main purpose of solving the difficulties between Creeks and Seminoles in Oklahoma was to make emigration more palatable to the Florida Seminoles.

Seminole Reservation, was itself ceded by the Treaty of March 21, 1866, 2 Kapp. 910. The Oklahoma Seminoles received a 200,000-acre reservation and another $70,000 "permanent fund" bearing 5 percent interest, both paid for out of the cash consideration cited in the treaty. This compensation was revised again by the Act of March 2, 1889, 1 Kapp. 340, by increasing the compensation for the land by an additional $1,912,942, $1 million in the form of a permanent 5 percent fund. These post 1856 treaties and Agreements resulted in the continuing transmutation of the trust asset (the Florida Seminole Reservation) into other forms, with only the Oklahoma Seminoles participating in the benefits of such transmutation.

It is impossible to determine from the provisions of the various treaties alone the total benefits arising directly out of the 1832 cession enjoyed by the Oklahoma Seminoles to the exclusion of the Florida Seminoles. The GAO Report shows more than $7,000,000 in "Disbursements for the benefit of the Seminole Nation of Indians", (actually made) "Pursuant to and in connection with" the Seminole Treaties.

A goodly part of consideration paid under the treaties was in the form of "permanent funds". Assuming that these payments were made from date of treaty to 1898, when tribal funds were ordered divided per capita, the following interest earnings resulted from the "permanent funds" created in connection with the 1832 cession of Florida Seminole lands:

Treaty	Principal Fund	No. of Yrs. @ 5 Percent	Total
Treaty of 1856	$ 500,000	42	$1,050,000
Treaty of 1866	70,000	32	112,000
Act of March 2, 1989	1,000,000	9	450,000

The intent of at least the 1856 permanent fund, principal and interest, was to provide a permanent $25,000 annuity to the Seminoles of Oklahoma in partial payment for the 1832 cession of the Florida Seminole land. The Florida Seminoles received no benefit from that annuity. The division of the award should be adjusted further to reflect that fact.

On the present record, it is difficult to quantify the full amount of Treaty benefits in addition to land consideration payments on the claim under the relevant treaties connected to the 1823 and 1832 Cessions. It was at least $2 million consisting of approximately $500,000 in annuities, $500,000 in a special fund, and $1,000,000 in interest earned from that fund. A more accurate and detailed accounting can certainly be achieved if the matter were referred to an impartial court.

Sincerely yours,

HOBBS, STRAUS, DEAN & WILDER

By: Jerry C. Straus

Frances L. Horn

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EXHIBIT A

TREATIES BETWEEN THE UNITED STATES AND
THE SEMINOLES AND PERTINENT ACTS OF CONGRESS

Florida Treaties

	Date	Place	Citation	Description
1.	9/18/1823	Camp on Moultrie Creek	7 Stat. 224	"Florida tribes" cede all claim to the Territory of Florida (23.9 million acres) except for a large reservation (5.8 million acres) and several very small ones for various chiefs
2.	5/9/1832	Payne's Landing	7 Stat. 366	"Seminole Indians" cede all lands in Florida and agree to emigrate west of the Mississippi
3.	10/11/1832	Tallahassee	7 Stat. 377	Appalachicola Band cedes one of the small reservations reserved in the 1823 Treaty
4.	6/18/1833	Pope's (Fayette County)	7 Stat. 428	Certain chiefs cede small reservations reserved in the 1823 Treaty

Oklahoma Treaties

5.	1/4/1845	Creek Agency, Okla.	9 Stat. 821	Treaty with Creek and Seminole Tribes. United States agrees to pay money due Seminoles under 1832 Treaty after Seminoles move, plus additional money. Creeks agree Seminoles may settle in Creek country

EXHIBIT A

	Date	Place	Citation	Description
6.	8/7/1856	Washington, D.C.	11 Stat. 699	Treaty with Creek and Seminole Tribes. Creeks grant over 2 million acres to the Seminoles. The United States agrees to pay the Creeks for the land granted and guarantees title to the Seminoles. The United States also provides additional funds to the Seminoles.
7.	3/21/1866	Washington, D.C.	14 Stat. 755	Seminoles cede the tract granted by the Creeks in the 1856 Treaty for 15¢ per acre and the United States sells the Seminoles a new reservation for 50¢ per acre
8.	3/2/1889		25 Stat. 980, 1003, c. 412	Congress appropriates $1,912,942.02 to pay the Seminole Nation for the lands ceded by the 1866 Treaty (2,037,414.62 acres)
9.	7/1/1898		30 Stat. 567, c. 542	Act ratifying agreement with the Seminole Nation under which all tribal lands were classified and allotted, and all tribal moneys were divided per capita
10.	4/26/1906		34 Stat. 137, c. 1876	This act dissolved the tribal governments of the Five Civilized Tribes including the Seminole Tribe of Oklahoma

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EXHIBIT B

Page 5 of the Report of the General Accounting Office certified September 29, 1933 and filed as an exhibit in Seminole Nation v. United States, Docket No. I-51, in the Court of Claims

Summary of disbursements made by the United States for the benefit of the Seminole Nation of Indians during the period from September 18, 1823, to June 30, 1930.

Disbursements for the benefit of the Seminole Nation of Indians			
Pursuant to and in connection with:			
— Treaty of September 18, 1823	(a)	$292,815.16	
— Treaty of May 9, 1832	(b)	600,310.63	
Treaty of October 11, 1832	(c)	16,500.00	
— Treaty of June 18, 1833	(d)	4,500.00	
— Treaty of January 4, 1845	(e)	120,037.33	
— Treaty of August 7, 1856	(f)	1,283,422.57	
Treaty of March 21, 1866	(g)	550,505.55	
Act of March 2, 1889	(h)	3,092,622.34	
Agreement of December 16, 1897, ratified by the act of July 1, 1898, and acts of April 26, 1900, and March 3, 1911	(i)	989,881.21	$7,011,056.79
From moneys appropriated pursuant to and in connection with the Treaties of August 7, 1856, and March 21, 1866			(j) 846,080.00
Disbursements made for the benefit of the Seminole Nation of Indians jointly with other Indians, pursuant to and in connection with:			
Treaty of August 7, 1856	(k)	29,566.33	
Treaty of March 21, 1866	(l)	4,503.23	34,069.56
			$7,891,206.40

Note: Certain other disbursements were made for the benefit of the Seminole Nation of Indians and are discussed in this report, but, for the reasons given on pages 8 to 10, 23, 29, and 76, said disbursements have not been included in this summary.

(a) See page 23, Item (b); also page 31, Item (b).
(b) See page 73, Item (a); also page 77, Item (e).
(c) See page 104, Item (a); also page 105, Item (e).
(d) See page 114, Item (a); also page 115, Item (a).
(e) See page 123, Item (a); also page 124, Item (b).
(f) See page 141, Item (e); also page 160, Item (c).
(g) See page 132, Item (d); also page 133, Item (b).
(h) See page 208, Item (b); also page 212, Item (d).
(i) See page 207, Item (b); also page 232, Item (f).
(j) See page 345, Item (b); also page 350, Item (d).
(k) See page 144, Item (d); also page 146, Item (d).
(l) See page 132, Item (e); also page 133, Item (c).

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EXHIBIT C

LIST OF SEMINOLE CASES FILED IN THE COURT OF CLAIMS BEFORE THE INDIAN CLAIMS COMMISSION WAS CREATED

I. Seminole Nation v. United States, 78 Ct. Cl. 455 (1933), dismissed on the pleadings. After amendment dismissed on the merits, 90 Ct. Cl. 151, certiorari denied 310 U.S. 639. Claim for value of lands and for funds United States distributed to Seminole freedmen on ground that freedmen did not have the rights of a native member of the Tribe.

II. Seminole Nation v. United States, 82 Ct. Cl. 135 (1935). Claim for an accounting. A judgment of $1,317,087.27 was reversed and remanded for further proceedings. 299 U.S. 419 (1937). After further proceedings the claim was dismissed (93 Ct. Cl. 500 (1941)). The Supreme Court reversed in part, ordered the case consolidated with the claim in Item IV below, and remanded, 316 U.S. 286 (1942).

III. Seminole Nation v. United States, 92 Ct. Cl. 210 (1940), certiorari denied 313 U.S. 563. Dismissed claim for taking of townsite lands sold to a Seminole chief in violation of statute.

IV. Seminole Nation v. United States, 94 Ct. Cl. 340 (1941), reversed and remanded, 316 U.S. 310 (1942). Claim for shortage of 11,550 acres in 200,000 acres United States guaranteed to Seminoles as a reservation, dismissed by the Court of Claims, reversed and remanded by the Supreme Court. On remand the Court of Claims entered judgment for $221,066.58 (102 Ct. Cl. 565 (1944), certiorari denied 366 U.S. 720).

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TELEPHONE: 835-1516
Area Code 202

June 17, 1988.

Jerry C. Straus, Esquire,
Hobbs, Straus, Dean & Wilder,
1819 H Street, N. W.,
Washington, D. C.

Dear Jerry:

Pursuant to our conference of last Wednesday morning at your office relative to the division of the judgment fund in the case of The Seminole Indians of the State of Florida and The Seminole Nation of the State of Oklahoma, Docket Nos. 73 and 151 (Consolidated), I am enclosing herewith two memorandums of mine: 1. Relative to the division of the judgment money on a population basis nearest to the date of the 1823, and 2. Answering statements in the April 25, 1988 letter of Jane E. Billie, Chairman, Seminole Tribe of Florida, and pointing out that no offsets were allowed against two two plaintiff groups in the settlement of the above case, and that the United States waived all offset claims against the parties in the "Stipulation for Entry of Final Judgment"; and also pointing out in the Eastern Band of Cherokee Indians case the U. S. Supreme Court held that Indians who remained East when the main tribe were removed to lands west of the Mississippi River, were not entitled to any of the assets accruing to main tribe in the West, etc.

As the final judgment in the above case was awarded to two groups: The Seminole Indians of the State of Florida and the Seminole Nation of Oklahoma, no other groups can have an interest in the judgment fund. Certainly the Seminole Nation of Oklahoma would resist any effort of the Florida Seminoles to divide the judgment fund three ways.

I would be happy to confer with you when convenient in an effort to resolve the issues between the parties in a just and fair way.

Sincerely yours,

Paul M. Niebell

Paul M. Niebell,
Attorney for the Seminole Nation
of Oklahoma.

PMN/ebn

Enclosures (2)

Certain statements made in the letter of James E. Billie, Chairman, Seminole Tribe of Florida, dated April 25, 1988, to Senator Daniel K. Inouye, Chairman, Senate Select Committee on Indian Affairs, indicates that he is not aware of the relevant facts, and should be corrected.

The letter states that because of the benefits received by the Seminole Nation of Oklahoma the judgment for the Florida lands was significantly reduced. This statement is incorrect. No payments to the Seminole Nation of Oklahoma were involved in the settlement of the Florida land claim, for in the final settlement the United States waived all of its offset claims against the Seminole parties, and the $16,000,000.00 judgment was a net payment for the cession of the Florida lands. In Seminole Indians of the State of Florida and The Seminole Nation of Oklahoma v. The United States, 38 Ind. Cl. Comm. 62 (1976), Docket Nos. 73 and 151 (Consolidated), at page 79, is the "Stipulation for Entry of Final Judgment", signed by counsel for all parties, and it is stated therein:

> "That no offset claims are to be asserted against said judgment so entered, and the United States hereby waives any and all claims for offsets which have been asserted or could have been asserted against the plaintiffs in this case under the provisions of Section 2 of the Indian Claims Commission Act. * * **

So the $16,000,000.00 settlement figure represented the value of the 27,933,276 acres ceded by the Seminole Nation as it existed in 1823, when the Treaty of Fort Moultrie of September 18, 1823 was executed. 2 Kapp. 203, 7 Stat. 224.

It is thus evident that the final judgment in this case was in no way reduced by later payments to the Seminole Nation of Oklahoma, and these benefits had no relation to the amount of the final settlement agreed upon by the parties in the above entitled case.

The Seminole Nation of Oklahoma experienced much loss of life, and many hardships from lack of adequate clothing and provisions, in the forced removal from their ancestral homes in Florida to lands in Indian Territory by the Military Forces

Attachment B

SEC. ___. The chief commissioner of the Court of Claims, pursuant to sections 1492 and 2509 of title 28 of the United States Code, is hereby directed to report to the Senate and the House of Representatives, at the earliest practicable date, findings of fact and a recommendation as to what constitutes a fair, just, and equitable division as between the Seminole Indians of Florida and the Seminole Indians of Oklahoma, of the $16,000,000 plus accrued interest, less attorneys' fees and litigation expenses, heretofore paid by the United States in satisfaction of the award to the Seminole Nation as it existed in Florida on September 18, 1823, entered by the Indian Claims Commission on April 27, 1976 in dockets numbered 73 and 151, consolidated (38 Ind. Cl. Comm. 91): Provided, That the findings of fact and recommendation shall be based on all relevant factors including those reflecting any difference in benefits received from the United States by the Oklahoma Seminoles and by the Florida Seminoles, respectively: Provided further, That the recommendation of the chief commissioner shall become effective and shall be binding on the Secretary of the Interior at the end of a sixty-day period commencing on the date the recommendation is submitted to Congress, excluding days on which either the House or the Senate is not in session because of an adjournment of more than three calendar days to a day certain, unless during such sixty-day period either the House or the Senate adopts a resolution disapproving the recommendation of the chief commissioner.

Attachment C

OKLEWAHA BAND OF SEMINOLE INDIANS
COX-OSCEOLA INDIAN RESERVATION, Orange Springs, Florida 32682

July 26, 1988

The Honorable
Daniel K. Inouye, Chairman
Select Committee On Indian Affairs
Washington, District of Columbia 20001

RE: Plan for the Use and Distribution of Seminole Judgment Funds in Dockets 73 and 151 Before the Indian Claims Commission

Dear Chairman Inouye,

My name is Little Dove Buford. I am the Principal Chief of the Oklewaha Band of Seminole Indians. The members of the Oklewaha Band are the direct descendants of Ocheé Harjo. The Band speaks its own language which is a derivative of Muskogee. Since the 1800's the Oklewaha Band has met at its annual Green Corn dance, the most important traditional ceremonial occasion when matters of general importance to the Band were discussed. The Band has its own traditions, beliefs, language, and governing body. Although the Band is not federally recognized, the Oklewaha Band of Seminole Indians are a tribe separate and apart from those that presently exist in Florida and Oklahoma. In fact the Band is presently in the process of collecting the data necessary to make application for federal recognition.

Recently the Oklewaha Band has become aware of a judgment award approved in 1976 by the Indian Claims Commission in the amount of Sixteen Million Dollars on behalf of the Seminole Indians of Florida and the Seminole Nation of Oklahoma. This award was in compensation for the approximately twenty-four million acres of aboriginal lands taken by the United States under provision of the Treaty of Camp Moultrie and the Treaty of Payne's Landing. Much of this land belonged to the Oklewaha Band.

Since 1976 negotiations have transpired between the Seminole Nation of Oklahoma and the Seminole Tribe of

OKLEWAHA AND OF SEMINOLE INDIANS
COX-OSCEOLA INDIAN RESERVATION, Orange Springs, Florida 32682

Florida. It is the Band's understanding that an agreement as to the distribution of said funds has been finalized between the two tribes. The Oklewaha Band considers any distribution plan agreed upon by these two Tribes without merit since the Band was never involved in the negotiations nor are we part of the distribution plan.

Each generation of the Oklewaha Band has been charged with the duty of re-acquire the ancestral land. At present the 750 members of the Band have pooled their resources together to by forty acres of our ancestor's land. This land the part of the Band now lives on was our ancestors land. It was taken from us by the United States Government in the mid 1930's under the Arms Act. The United States Government gave 168 acres to anyone who would live here and "bear arms" against the rightful owners of this land, the Oklewaha Band of Seminole Indians. The Band had to buy its own land back.

In 1849 Florida enacted a law forbidding the Seminoles to cross the border of their reservation. Our forefathers refused to be removed to reservations preferring instead to remain near their ancestral land. Fearing retaliation and forced removal, the Oklewaha Band of Seminole Indians hid from the authorities meeting secretly every year at the Green Corn Dance to conduct its tribal business and to keep track of family affairs. As a child I can remember being warned not to tell anyone about the Green Corn Dance. The whole ceremony was conducted quietly and secretly for fear of being discovered by the authorities. For these reasons the members of the Band have never been included in any census conducted by the federal government. Membership in the Oklewaha Band requires prove of Seminole heritage.

The Oklewaha Band of Seminole Indians is not a newly created organization. The Band can prove its tribal existence back 100 years or more. A Constitution was passed in July of 1827. The members of the Band can recite their tribal history, ways, beliefs, religion and folklore. Our tribal ways are a part of our life.

The Band does not contest the money award granted by the Indian Claims Commission to the Seminole Indians. However part of the judgment award belongs to the Oklewaha Band and can be used by the Band to regain its ancestral lands.

(904) 546-1386

OKLEWAHA BAND OF SEMINOLE INDIANS
COX-OSCEOLA INDIAN RESERVATION, Orange Springs, Florida 32682

Consequently, the Oklewaha Band of Seminole Indians, by and trough its Principal Chief, Chief Little Dove Buford, formally request the Senate Select Committee and Congress to refrain from considering any legislation regarding the distribution of these funds until the Oklewaha Band of Seminole Indians petition for its fair share of the funds scan be considered by the Department of Interior. Since this award is to the Seminole Indians of Florida who lost their lands to the United States, the Oklewaha Band considers any plan for distribution that does not include a fair compensation to the Oklewaha Band both illegal and unfair and unjust. A fair distribution should include a share to the Oklewaha Band which would allow the Band to buy back a good portion of the Band's ancestral lands.

The Oklewaha Band of Seminole Indians formal petition Congress for its fair share of the Judgment Award and for a chance to present its case before this Honorable Committee.

Thank you for your attention to this letter and the opportunity to present my objections.

Respectfully submitted,

Principal Chief Bettie Little Dove (Ghigau) Buford

Bettie Little Dove (Ghigau) Buford
Principal Chief
Oklewaha Band of Seminole Indians

cc.

Hon. Robert Byrd Majority Leader, U.S. Senate	Hon. John Melcher U.S. Senate
Hon. Jim Wright U.S. House of Representatives	Hon. Quentin Burdick U.S. Senate
Hon. Lawton Chiles U.S. Senate	Hon. Thomas Daschle U.S. Senate
Hon. Robert Graham U.S. Senate	Hon. Daniel Evans U.S. Senate
Hon. Dennis DeConcini U.S. Senate	Hon. John McCain U.S. Senate

(904) 546-1386

OKLEWAHE AND OF SEMINOLE INDIANS
COX-OSCEOLA INDIAN RESERVATION, Orange Springs, Florida 32682

Hon. Frank Murkowski
U.S. Senate

Hon. Kenneth MacKay
U.S. House of Representative

Hon. Bob Marinez, Governor
State of Florida

Hon. Donald Paul Hodel, Secretary
U.S. Department of Interior

Ross O. Swimmer, Assistant Secretary
U.S. Department of Interior

Bill Ott, Eastern Area Director
Bureau of Indian Affairs
U.S. Department of Interior

Ralph Tarr, Solicitor
U.S. Department of Interior

Timothy Vollmann, Associate Solicitor
U.S. Department of Interior

Lynn Collins, Deputy Ass. Solicitor
U.S. Department of Interior

Jerry Straus, Counsel
Seminole Tribe of Florida

S. Bobo Dean, Counsel
Miccosukee Tribe of Florida

Paul M. Niebell, Counsel
Seminole Nation of Oklahoma

Robert T. Coulter, Counsel
Traditional Seminoles

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STATEMENT OF THE TRADITIONAL SEMINOLE NATION
REGARDING BILLS TO DISTRIBUTE THE AWARD OF THE
INDIAN CLAIMS COMMISSION IN DOCKETS 73, 73-A AND 151

This statement is submitted by the Traditional Seminole Nation of Florida in response to S. 1096 and S. 1336. My name is Danny Billie and I am the spokesman for the Traditional Seminole Nation. Accompanying me today is Curtis G. Berkey, our attorney from the Indian Law Resource Center. Both bills provide for the payment and distribution of the money awarded by the Indian Claims Commission in 1976 for the failure of the United States to pay adequate compensation for the taking of 24 million acres of Seminole land in the 1823 Treaty of Camp Moultrie. We appreciate this opportunity to submit our views.

The Traditional Seminole Nation opposes enactment of either S. 1096 or S. 1336 and any payment and distribution of the award unless amendments are adopted to preserve and protect the Nation's existing rights and claims to the lands on which our members presently live in south Florida and to our traditional territory. We are deeply concerned that payment and distribution of the award may jeopardize the land rights of the traditional Seminole Nation. We have proposed an amendment to both bills which will ensure that the Indian Claims Commission judgment, award and distribution will not be used to undermine our land rights. A copy of the amendment is attached to this statement.

The traditional Seminoles, either individually or as a group, do not wish to receive any of the money awarded by the Indian Claims Commission, now or in the future. Nor do we want any part of the award to be set aside for distribution at a later time. There is no distribution plan that can be devised under which the traditional Seminoles would accept any part of the award. Further, because distribution of the award to other Seminole and Miccosukee groups might also endanger the existing land rights of the traditional Seminole Nation, we oppose distribution to those groups as well, unless the protective amendment we propose is adopted.

The traditional Seminoles are a politically and culturally cohesive Indian nation whose members live in scattered camps and small villages throughout the traditional Seminole territory in southwestern Florida, especially along the Tamiami Trail. Each camp or village contains several families. For reasons of privacy, we do not maintain a formal roll, but our membership is well known and easily identified. Almost all of our members are full-blooded Seminoles. We estimate our number to be approximately 200. We have no reservation or other land area recognized by the United States, but we continue to live on aboriginal Seminole lands.

The traditional Seminoles are descendants of the original Seminole Nation, and we continue to maintain and practice the traditional government, culture, language, religion and way of life of our ancestors. Because the traditional Seminoles are not

members of either the Seminole Tribe of Florida or the Miccosukee Tribe of Florida, and because we have successfully preserved our autonomy from federal and state governments, we are sometimes called "independent" Seminoles. We have steadfastly resisted all efforts by the federal government to turn us away from our customs and traditional ways. We are Indian people who have always been independent, and we have never willingly accepted the authority of the United States or State of Florida. The traditional Seminoles support themselves primarily by subsistence hunting, fishing, gathering and craft-making. Chickee construction from cypress is also a common means of support. We receive no government assistance.

There may be other independent Seminoles in Florida who do not regard themselves as part of the traditional Seminole Nation, and who are not enrolled in either the Seminole Tribe or Miccosukee Tribe. We cannot be certain how many such individuals there are, but we believe the number to be quite small. We of course do not claim to speak for them. We would not oppose reasonable provisions permitting these individuals to share in the distribution of the award, provided the rights of the traditional Seminoles are protected by the adoption of the proposed amendment.

The traditional Seminoles have existing rights to land in Florida that may be threatened by the distribution of the award.

The lands on which our villages and camps are located are held by the traditional Seminoles in common solely as members of the Seminole Nation. In addition to the land we presently occupy, we continue to assert and claim the right and title to our traditional Seminole lands, an area encompassing millions of acres.

A complete explanation of the legal basis of the land rights of the traditional Seminoles is beyond the scope of this statement. We are not asking Congress at this time to resolve the larger issues of Seminole land rights in this legislation. Rather, we are asking that the existing rights and claims of the traditional Seminoles be preserved and protected against impairment by the judgment of the Indian Claims Commission and distribution of the claims award. We have set forth a brief explanation of the legal basis of the Seminole claims in the paragraphs that follow.

The right and claim to the traditional Seminole territory is based on aboriginal occupancy and on treaties between Spain and Great Britain in 1763, between the Seminole Nation and Spain in 1784, between the Seminole Nation and Spain in 1793 and between the United States and Spain in 1803. The legal protection accorded Seminole land rights is recognized by the Supreme Court in Mitchel v. United States, 34 U.S. (9 Pet.) 711, 754-754 (1835). The traditional Seminoles do not recognize the validity of the Treaty of Camp Moultrie of 1823, by which most of the aboriginal territory of the Seminole Nation was allegedly ceded to the

United States. That treaty was not lawfully made by Seminole leaders authorized to make land cessions on behalf of all Seminole clans and villages.

In any event, a large part of our territory was subsequently recognized as Seminole property by executive agreement between authorized representatives of the Seminole Nation and the United States in 1842. Known as the Worth Agreement, after the U.S. Army Colonel who negotiated on behalf of the United States, it recognized and guaranteed Seminole title to approximately five million acres of land in he Everglades and Big Cypress areas of southwestern Florida. The agreement ended the unsuccessful war to force the Seminoles to move to the Indian territory. The agreement was never reduced to a formal written and signed document, but the historical record indicates that the Seminoles retained this land so long as they remained at peace, agreed to rescue crews of shipwrecked Americans along the coastline, and agreed to punish any of their people who committed depredations on the white settlements. In 1845, President Polk confirmed the validity of the Worth Agreement by ordering the creation of a 20 mile buffer zone around the Seminole territory in which no surveys, sales or settlements could be made.

The Worth Agreement is binding under United States law and international law, and it has never been abrogated, revoked or altered by Congress or the President. Our property rights have never been lawfully extinguished by the United States.
Nor have we voluntarily given up our rights to this land.

The Miccosukee Tribe and the Seminole Tribe have reached negotiated settlements of their land claims and land disputes. These settlements were approved and ratified by Congress. See Florida Indian (Miccosukee) Land Claims Settlement Act of 1982, 25 U.S.C. 1741 et seq. and Florida Indian (Seminole) Land Claims Settlement Act of 1987, 25 U.S.C. 1772 et seq. The traditional Seminoles were not party to these negotiations, and neither the Miccosukee Tribe nor the Seminole Tribe claimed to be acting with authority from or on behalf of the traditional Seminoles. As a result, we are not bound by the extinguishment of land claims effectuated in these acts. On the contrary, in both cases the congressional committees considering the bills adopted language in the committee reports indicating that Congress did not intend to affect the rights and claims of the traditional Seminoles.

We cannot accept any part of the award because it represents payment for the taking of the lands that we currently occupy and for the lands guaranteed to us by aboriginal right and treaty agreement. Our homes and the lands on which we hunt, fish and gather cypress are included within the lands comprehended by the Indian Claims Commission proceeding. To accept payment for the taking of this land would be a concession that we cannot make: that the land has been relinquished to the United States. In accepting the money, we would almost certainly be giving up any

right and claim to the land. Seminole law absolutely prohibits any land-for-money exchanges. We will not sell our lands to the United States.

The Indian Claims Commission judgment and the distribution of the money may endanger our land rights in other ways as well. The Indian Claims Commission statute discharges the United States and bars all subsequent claims against the United States involved in the case. The statute provides that the "payment of any claim, after its determination in accordance with this chapter, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy." 25 U.S.C. section 70u. The statute further provides that a "final determination . . . shall forever bar any further claim or demand against the United States arising out of the matter involved in the controversy." Id. We are concerned that these provisions may be interpreted to extinguish our existing land rights and claims if we accept the award of the Commission. Because the scope of these sections is so broad, we are also concerned that the distribution of the award to the other interested Indian groups might also impair our rights. For these reasons, we reject the award of the Commission and we strongly urge Congress to adopt the amendment we have proposed to protect and preserve our land rights.

Common law principles of res judicata and collateral estoppel may also unfairly be used to undermine Seminole land rights. The Commission has ruled that the Treaty of Camp Moultrie of 1823

was a valid and binding treaty on the Seminole Nation and its successors. Further, the Commission ruled that no legal interest was acquired by the Seminole Nation in the area that was set aside in the Worth Agreement of 1842.

In our view, these rulings and the res judicata bar of the statute cannot fairly operate to impair the land rights of the traditional Seminoles. As set forth more fully below, the traditional Seminoles did not authorize the I.C.C. claim nor were we represented by the petitioners in the claim. Nevertheless, we remain greatly concerned that our land rights may be in jeopardy because of the Claims Commission rulings and award. The courts have interpreted I.C.C. judgments and awards very broadly to practically preclude the assertion of any rights and interests, even by non-parties, in the same land that is involved in the I.C.C. proceeding. See, e.g., Oglala Sioux Tribe v. Homestake Mining Co., 722 F.2d 1414 (8th Cir. 1983). In that case, the court ruled that the tribe, even if it had been dismissed from the ICC proceeding, would have been collaterally estopped by the final judgment of the Commission that the tribe's land was lawfully taken by the United States. The court reasoned that the tribe is in privity with the Sioux Nation, the petitioner in the ICC case. Because of this threat, we are asking Congress to enact an amendment to the bill that will ensure that the ICC judgment and award will not be used against us to undermine our land rights.

Amending the bill as we propose is a fair and just solution to the dangers created by the Indian Claims Commission judgment and award. It is a matter of historical record that the traditional Seminoles and their ancestors have consistently opposed the Indian Claims Commission case, and they have fought tenaciously to prevent the Commission from harming their land rights. The traditional Seminoles never made a claim for compensation in the Commission, they never authorized a claim to be made in their behalf, and they opposed the claim that was made at every opportunity. This is not a case where a party to the Commission proceedings has decided to change its strategy in light of new legal or factual developments. Rather, we understood from the beginning that the Commission was a serious threat to our land rights. We have never wavered in our opposition.

After the Indian Claims Commission was created in 1946, the Bureau of Indian Affairs decided that the Seminoles in Florida should present a claim for compensation for their lands taken by the United States. At that time, there was no federally recognized tribal organization of the Seminoles, and there was no unified tribal entity which could lawfully present itself as a party-claimant for all Seminole people. The Superintendent of the Seminole Indian Agency nevertheless moved to initiate the filing of a claim. He arranged a meeting on one of the Seminole reservations at which 12 individual trustees of the BIA cattle project were signed up as Seminole claimants. On August 14, 1950, these individuals, claiming to represent the "tribal organization" of

the Seminoles, filed a petition seeking money damages for the alleged taking of all Seminole lands in Florida without adequate compensation. The individual petitioners had no authority to represent and speak for the traditional Seminoles, who did not live on any of the reservations, and who were not involved in any government programs. The various Seminole individuals who dealt directly with the claims attorneys were not Seminole governmental officials with authority to act on behalf of the traditional Seminoles. The traditional Seminoles had nothing to do with the filing of the claim.

The traditional Seminoles immediately moved to oppose the claim, fearing that it would jeopardize their land rights. They first attacked the contract with the claims attorneys. The claims attorneys were informed in 1950 that the traditional Seminoles would dissociate themselves from all claims activity. They also informed the local congressman that they "do not desire and will not participate in the proposed suit . . . . "

On October 1, 1950, the traditional Seminoles made formal protests to the Indian Claims Commission, the Commissioner of Indian Affairs and the Attorney General, stating that the claim petitions "have not been authorized by them or for them" and that "it is not their desire or intention, now or in the future, to accept any money from the United States Government." Again on March 1, 1954, a protest was lodged with the United States, this time in the form of a "Buckskin Declaration." This document is a formal petition to the President of the United States from

the traditional Seminoles, who at that time were organized as the General Council of the Mikasuki Tribe. Regarding the Claims Commission claim, the petition declared:

> There has been filed before the Indian Claims Commission in your government, without our authority, a claim, supposedly by us, and supposedly to compensate our Tribe with money for lands taken from us by the United States Government in the past. We want no money.

After these efforts failed to stop the claims process, an effort was made to enter the claims process itself and demand its termination. On September 17, 1954, a document entitled "Special Appearance and Motion to Quash" was filed in the Commission. The principal concern of the motion was stated as follows: "That the Miccosukee Seminole Nation (Florida) has never authorized this claim, cannot be bound by this proceeding, and has rights to lands in Florida that they are not willing to exchange for money, nor surrender." The attorneys for the petitioner, who claimed to be representing all Seminoles in Florida, nonetheless moved to strike the motion from the record. The Commission granted the motion to strike, without a hearing and without opinion, by Order of April 8, 1955. On appeal, the Court of Claims dismissed the appeal on the ground that the Commission's action was not a final order and thus not appealable. Billie v. United States, 146 F. Supp. 459, 137 Ct.Cl. 161 (1956), cert. denied, 355 U.S. 843 (1957).

Again in 1961 the same group moved to dismiss the proceedings before the Commission. Without a hearing, the Commission denied the motion on the same day it was filed, stating that since the group had not filed a timely separate claim, they had no standing to appear as a separate claimant in the case. The Commission's reasoning is absurd since the group was not seeking to filed a claim, but to dismiss the claim. Although not all traditional Seminoles joined in the motion to dismiss, they were united in their opposition to the claim.

One final effort to oppose the claim was made in 1976 when Guy Osceola, the son of Cory Osceola who was a leader of the early opposition to the claim, filed suit in federal district court to enjoin the Commission from entering final judgment. The suit was filed on behalf of all traditional Seminoles. The suit complained that the Commission and the statute under which it operates acted to deprive the traditional Seminoles of their property rights without giving them reasonable notice and an opportunity to be heard. The Commission refused to give the traditional Seminoles a hearing and refused to permit them to exclude themselves from the effects of the Commission's judgment, in violation of constitutional guarantees of due process.

On March 11, 1977, the district court ruled that whatever property rights the traditional Seminoles have, the United States is free to take them without any due process or constitutional restraints. The court virtually ignored all the other allegations and claims in the complaint and dismissed the case.

Osceola v. Kuykendall, Civil Action No. 76-492, March 11, 1977 (D.D.C.) An appeal to the Supreme Court was dismissed on the ground that the lower court decision had not been a decision on the constitutional merits of the case.

In more than 28 years of proceedings, we have never been accorded an evidentiary hearing in the Commission or any court. The claim prosecuted in the Commission was not authorized by the traditional Seminoles, and it was unlawful and in some respects fraudulent. Yet we have been thwarted at every turn from avoiding the potentially harmful consequences of the Commission's judgment and award.

The position we take today is the same position we have been taken every time legislation has been proposed to distribute and pay the award. In 1978, when similar bills were introduced to pay the award, the traditional Seminoles urged the adoption of the same amendment we propose today. At that time, we submitted a lengthy report with documentary support setting forth the basis of Seminole land rights and the efforts to guard against impairment by the Indian Claims Commission. The report was included in the hearing record. "Distribution of Seminole Judgment Funds," Hearing on S. 2000 and S. 2188, 95th Congress, 2d session, March 2, 1978. Again last year, the traditional Seminoles made the same objections to the proposed distribution of the award.

In light of this unbroken history of opposition to the Claims Commission case, we urge Congress to act to protect the existing land rights of the traditional Seminoles. Surely we can

agree that it would be unfair and unjust for Congress to enact legislation that may injure the land rights of the Seminoles who were not part of the Commission's proceedings, never authorized a claim to be made in there behalf and strenuously opposed the case at every opportunity. If we had been granted a fair hearing in the Commission or in court, perhaps this amendment would not be necessary. Because we have been unconstitutionally denied an opportunity to remove ourselves from the case, we ask Congress to enact the amendment we have proposed to preserve our land rights. It is the right thing to do.

The amendment we propose does not require changes in existing law. In 1985, the Supreme Court ruled that "payment" within the meaning of section 22(a) of the Indian Claims Commission Act occurs when the funds to pay the award are placed in the United States Treasury in trust for the tribe. United States v. Dann, 470 U.S. 39 (1985). This means that the United States is discharged on its money liability on the claim under section 22(a) when the funds are deposited in the U.S. Treasury, instead of when the funds are actually paid and distributed to the tribe.

Although the funds to pay the award in the Seminole cases have been deposited in the Treasury so that "payment" has occurred within the meaning of section 22(a), we do not believe the Dann decision bars the assertion of land rights by the traditional Seminoles in the land that is subject to the Indian Claims Commission proceeding. Because they were never part of the

Claims Commission proceeding and in fact have disassociated themselves from it, the traditional Seminoles are not bound by the discharge provisions of section 22.

As the historical record shows, we never made a claim in the Indian Claims Commission, and we were not part of the petitioners nor authorized the petitioners to make a claim on our behalf. None of the actions taken by the petitioners in the case were authorized by the traditional Seminoles. The rulings of the Commission and the discharge provisions of the statute cannot fairly be said to apply to or bind us. Thus, the questions of whether payment has already occurred and its implications are not legally relevant issues for determining the land rights of the traditional Seminoles.

We ask that Congress consider fairly all of the facts that are relevant to our concerns regarding the effect of the Indian Claims Commission proceeding. Although we continue to maintain that the Claims Commission proceeding does not legally bind us or affect our rights, the amendment is necessary to remove any uncertainty and doubt in this regard.

Respectfully submitted,

September 15, 1989

Danny Billie
Spokesman for the Traditional
Seminole Nation

PROPOSED AMENDMENT TO S. 1096 AND S. 1336
SUBMITTED BY THE TRADITIONAL SEMINOLE NATION OF FLORIDA

Add new section as follows:

Payment and distribution of the award in accordance with the provisions of this Act shall satisfy in full the settlement agreement entered into by the United States and the petitioners in Seminole Indians of the State of Florida and the Seminole Nation of Oklahoma v. United States, Indian Claims Commission Dockets 73, 73-A and 151, reported at 38 Ind. Cl. Comm. 91 (April 27, 1976); provided, that notwithstanding the provisions of 25 U.S.C. section 70u or any law or judicial decision, and notwithstanding any proceedings, findings of fact or conclusions of law of the Indian Claims Commission or the United States Court of Claims in this matter, payment and distribution of the award in accordance with this Act shall not in any manner affect, impair or diminish any right, title or interest of the Traditional Seminole Nation of Florida, also known as the independent Seminoles, either as a group or individually, to any land, property, natural resources, or hunting, fishing, gathering and water rights; provided further, that the payment and distribution of the award shall not in any manner affect, impair or diminish any claim of action, whether or not presently pending or cognizable in any court, of the Traditional Seminole Nation of Florida for the ownership, return of or compensation for the unlawful use of any land, that in no event shall any factual finding, conclusion or law or any other determination made in this matter by the Indian Claims Commission or the United Sates Court of Claims pertaining to the title to or the cession or taking of any land, property or natural resource have any res judicata, collateral estoppel, law of the case, stare decisis or any other preclusive effect. Nothing in this section shall be construed to constitute federal acknowledgment of the Traditional Seminole Nation of Florida as an Indian nation or tribe under federal law.

September 15, 1989

STATEMENT ON BEHALF OF
MR. BILLY CYPRESS
CHAIRMAN
MICCOSUKEE TRIBE OF INDIANS OF FLORIDA
BEFORE
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON
S. 1336 & S. 1096

The Miccosukee Tribe of Indians of Florida does not support the enactment of either of these bills. On May 6, 1976 the members of the Miccosukee Tribe voted 108 to 0 against the acceptance of a cash settlement from the United States for tribal rights to land in Florida. That decision of the Tribe has never been modified or rescinded.

As we have repeatedly indicated to the Bureau of Indian Affairs and the Congress, if such legislation is enacted notwithstanding our position, we request that no part of the judgment fund allocable to the Miccosukee Tribe should be paid either to the Tribe or any other entity. Such share of the fund should be segregated and not paid unless the Tribe's membership, either by referendum or in a duly authorized General Council, votes to accept the funds.

Section 8 of S. 1336 conforms to the wishes of the Tribe in banning any distribution from the Tribe's share of the judgment fund without such a tribal referendum or a General

Council vote. Consequently, we request that, if legislation is passed which authorizes the distribution of these funds, such section 8, or a provision with substantially identical effect, shall be included.

We appreciate the opportunity to provide the Committee with the views of the Miccosukee Tribe on this matter.